

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED THIRTEENTH CONGRESS SECOND SESSION

JUNE 4, JUNE 24, JULY 24, and JULY 29, 2014

Serial No. J-113-1

Part 9

Printed for the use of the Committee on the Judiciary



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NOMINATIONS OF HON. GEOFFREY W. CRAWFORD, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF VERMONT; HON. NANCY B. FIRESTONE, NOMINEE TO BE JUDGE OF THE COURT OF FEDERAL CLAIMS; LYDIA KAY GRIGGSBY, NOMINEE TO BE JUDGE OF THE COURT OF FEDERAL CLAIMS; AND THOMAS L. HALKOWSKI, NOMINEE TO BE JUDGE OF THE COURT OF FEDERAL CLAIMS

WEDNESDAY, JUNE 4, 2014

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:02 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy and Grassley.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,
A U.S. SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. Well, good morning. Today we are going to hear from four very well qualified judicial nominees—one to the district court in the State of Vermont, without being overly parochial, and three to the U.S. Court of Federal Claims.

I am happy to welcome Vermont Supreme Court Justice Geoffrey Crawford. Justice Crawford has significant criminal and civil experience. He was a Vermont trial court judge for 11 years; he recently became an Associate Justice of the Vermont Supreme Court. In fact, the Governor's comment to me when I recommended Justice Crawford to the President was, "Hey, you are taking one of our best Supreme Court Justices." He formerly was a partner in a Burlington law firm. And I am glad to see Jerry O'Neill here in the audience. Justice Crawford earned his B.A., cum laude, from Yale and his J.D., cum laude, from Harvard Law School.

I recommended Justice Crawford to President Obama after he was vetted and recommended to me by Vermont's nonpartisan Judicial Nominating Commission. I did not know him before this process, but I read the report of those who did the work of the Nominating Commission, and then I met for an extended time, Kristine Lucius, Chief Counsel, and myself, and John Tracy, the

head of the Vermont office, with Justice Crawford, and I was struck by his brilliance, his compassion, his humility, and his devotion to his family. He has earned a stellar reputation in Vermont's legal community and from those who appeared before him as a careful jurist who understands the effects that legal rulings have on people's lives. I have no doubt that once confirmed he will bring the same understanding and impartiality to the Federal judiciary in Vermont. We are just one district, but he will be sitting in Rutland, Vermont.

Then we have three nominees to serve on the Court of Federal Claims: Judge Nancy Firestone, who is well known to the most important member of this Committee, Kristine Lucius; Thomas Halkowski; and Lydia Griggsby, who has served on my Judiciary Committee staff since 2006 and currently serves as my Chief Counsel for Privacy and Information Policy. I recommended Lydia to the President for the position because I know her intellect and good judgment will make her a fine judge. And that is what I told the President. Before Lydia came to work with me on the Committee, she served in the Justice Department. She tried several matters before the Court of Federal Claims. I did tell her father this morning that the one reason I might vote against her is to keep her here on the Committee. But I will proudly vote for her.

Judge Nancy Firestone has served with distinction on the U.S. Court of Federal Claims since 1998, and I am sure she will continue that with another 15-year term.

And Mr. Halkowski is a principal at Fish and Richardson; that is a law firm specializing in intellectual property law in Wilmington, Delaware. He started off clerking on the Court to which he is nominated for Judge Roger Andewelt. He also clerked for then-Chief Judge Helen Nies on the Federal Circuit, so once he is confirmed, his career will have gone full circle.

I welcome you all, but I will turn first, of course, to my friend and colleague Senator Grassley.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. First, I congratulate today's nominees, and I know your families and friends that are here are proud of you. And, of course, professionally it is an important milestone in all of your careers, and so I welcome you. I will not go into the details he did, the Chairman did, but I can associate myself with those remarks and point out that I know today's hearing is of particular significance for the Chairman because I have had an opportunity to have a lot of Iowans in the same place that you are from Vermont for the Chairman. And so it is important for the Chairman as well as it is for you.

Not only do we have a nominee for the District of Vermont, but we also have a nominee for the Court of Federal Claims, Ms. Griggsby, whom we all know very well. She has been a counsel on the Chairman's staff, and just like I have people leave my staff, he is going to miss you as well when you go to this very important position you have been appointed to. I know that you joined the Committee staff after being both in the Department of Justice as well as the U.S. Attorney's Office.

We know Lydia well. She has worked on many important Committee matters, including the Electronic Communications Privacy Act, the Freedom of Information Act, and other privacy issues. Through that work Lydia has a well-earned reputation of being diligent, very thoughtful, and professional.

Ms. Griggsby, you are now in a seat that several of your colleagues have occupied before you, fielding questions from all of us.

So once again, even though I only spoke about two of the four, congratulations to all of you.

Chairman LEAHY. Thank you very much.

Please, all four of you, stand and raise your right hand. Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Justice CRAWFORD. I do.

Judge FIRESTONE. I do.

Ms. GRIGGSBY. I do.

Mr. HALKOWSKI. I do.

Chairman LEAHY. Let the record show that all responded in the affirmative.

We will begin with you, Justice Crawford. If you have any statement you would like to make, please go ahead, and you may introduce your family.

**STATEMENT OF HON. GEOFFREY W. CRAWFORD, NOMINEE
TO BE DISTRICT JUDGE FOR THE DISTRICT OF VERMONT**

Justice CRAWFORD. Yes, Senator, I would like to thank the Members of the Committee for their time and attention. I would like to thank you in particular for the trust that you have placed in me. And I would like to introduce my family, if I might.

My wife, Leslie, is here, and my children: my daughter, Jocelyn, and her son, Matthew; and her husband and older daughter, Evelyn, who is 3, are home in Wisconsin. My son Tobias and my son Elliott; and my daughter-in-law, Christine, and her son, James; and my son, Nicholas.

And with me also is my dear friend and former law partner, Jerry O'Neill.

Chairman LEAHY. Who I might add has been a friend of mine for decades, also.

[The biographical information of Justice Crawford appears as a submission for the record.]

Chairman LEAHY. I would note to the—and I am not trying to get rid of anybody from here, but please feel free with young children, if you need to take a break, you can go right straight through that door, and there is a table there. But I was delighted to meet all of them before.

That was not a hint.

[Laughter.]

Chairman LEAHY. My wife and I just had a chance to spend a week with two of our five grandchildren, and I enjoyed every single second of it, even though at times the decibel level was such that the satellites went out of orbit.

[Laughter.]

Chairman LEAHY. Judge Firestone, did you—

**STATEMENT OF HON. NANCY B. FIRESTONE, NOMINEE
TO BE JUDGE OF THE COURT OF FEDERAL CLAIMS**

Judge FIRESTONE. Thank you. I want to thank the Committee and the President for this honor, and I would like to just quickly introduce the staff that makes my work possible as a judge: my judicial assistant, Diana Perez-Kidwell; Richard Hagerman and Steven Reilly, who are my two law clerks. It is my pleasure to have them here with me today.

[The biographical information of Judge Firestone appears as a submission for the record.]

Chairman LEAHY. Thank you.

Ms. Griggsby, did you wish to say something and introduce family members?

**STATEMENT OF LYDIA KAY GRIGGSBY, NOMINEE
TO BE JUDGE OF THE COURT OF FEDERAL CLAIMS**

Ms. GRIGGSBY. I would. Thank you very much, Chairman Leahy, and thank you for your very gracious and kind introduction. Thank you, Ranking Member Grassley, as well for your kind introduction and words.

I am very honored and blessed to have my father with me today, Professor William L. Griggsby, from Pikesville, Maryland, seated behind me. My mother, the late Mary Kate Rainier Griggsby, passed away in 2011. She is with us in spirit today, and I want to honor her as well.

I am also joined by many mentors and friends and colleagues. I would like to acknowledge Dr. Wyneva Johnson—please stand—seated behind me, a long-time mentor and attorney with the Department of Justice.

I also have several friends farther back in the audience, Delta Sigma Theta sorority sisters, club sisters, and many other mentors. I thank them all for their love and support. And many other family members who are watching via the Webcast today across the country.

[The biographical information of Ms. Griggsby appears as a submission for the record.]

Chairman LEAHY. I remember the sadness of everybody when your mother passed. I remember that time. And I have a feeling she is watching.

Mr. Halkowski.

**STATEMENT OF THOMAS L. HALKOWSKI, NOMINEE
TO BE JUDGE OF THE COURT OF FEDERAL CLAIMS**

Mr. HALKOWSKI. Thank you, and thank you to the President for this truly humbling honor of being nominated to serve on the U.S. Court of Federal Claims. And thank you, Chairman Leahy and Ranking Member Grassley, for convening this hearing and the opportunity to be heard.

I have here just a few folks: my oldest son, Mick, who is just recently graduated, he is headed down to Texas to work as a chemical engineer at Dow. And my mother and father, Eleanor and Phil Halkowski, traveled here from my home town in St. Francis, Wisconsin. I could go on about their sacrifice and hard work, but I will simply say that I am indebted to them for everything.

Also here are my mother- and father-in-law, Michael and Kathy Philps, who traveled here from California to lend their support, as well as my brother- and sister-in-law, D'Arcy and Cecilia Philps, along with their children, Miranda and Spencer.

Unfortunately, my wife, Dana, could not be here, which is ironic because without her love and support I myself would not be here. But she is attending the high school graduation of our youngest son, Benjamin, back in Unionville, Pennsylvania, which is going on at this very moment. I am assured, though, from my son, Ben, that I am not missing anything. He is going to be doing the exact same thing in 4 years at the University of Pittsburgh. And thanks to this hearing, that promise is now on the record.

[Laughter.]

Chairman LEAHY. And we will make sure he gets a copy of this record.

Mr. HALKOWSKI. My daughter, Scout, also, unfortunately, cannot be here due to commitments back at her college in Pennsylvania.

I have many relatives, two brothers, three sisters, back in Wisconsin, as well as many others whose support I appreciate. One person I do need to mention, my Grandma Nuffky back in Wisconsin. She will be 99 years old on June 14th. She assures everyone, however, to hold off on the celebration until next year, because she wants to do her 100th birthday big time.

[Laughter.]

Mr. HALKOWSKI. Finally, there are just two people I need to acknowledge who are no longer with us today: Judge Roger Andewelt as well as Chief Helen Nies. Judge Andewelt served on the U.S. Court of Federal Claims, gave me my first job out of law school, and was the best mentor I could have ever hoped for. And Judge Nies similarly provided—generously provided her time and wisdom. And I miss them both, but I carry with me the lessons that they taught me over the years.

And with that, I thank you again for convening this hearing, and I look forward to the opportunity to address your questions.

[The biographical information of Mr. Halkowski appears as a submission for the record.]

Chairman LEAHY. Well, thank you.

Justice CRAWFORD, I had occasion to talk with the President shortly after I had met with you, and I told him of your appreciation for his nomination. And I told him that this was one nomination he will not have to worry about.

You served as a Vermont State court trial judge for 11 years, and you have been on the Supreme Court now since last year. What lessons do you take from a State court as you transfer over to the Federal court?

Justice CRAWFORD. I think the principal lesson is twofold: one is the real need to stay close to the facts in every case, to really try and understand what is going on; but even more important, in dealing with the litigants, to try and keep it fresh, to try and bring something new to each case, not to become routine or jaded, to try and really engage with each case anew. And the State trial court judges do a fine job, I think, in both those regards.

Chairman LEAHY. I enjoyed my years as a trial lawyer and as a prosecutor. But I left that time with an abiding feeling that courts'

judges should think not just of the people who are in there all the time—the prosecutors are, a well-known litigant like Mr. O'Neill is, others—but the people who are there, this is their one and only time they may be before the court. Can you give us assurance that everybody who comes in your court, no matter what their political party or their economic status or whether they are plaintiff or defendant, government or defendant, that they will be treated the same?

Justice CRAWFORD. Senator, I can make that commitment. That has been my effort over the course of the last 12 years, and I intend to continue as I started out. For many people we are in the courts the face of government that they deal with very directly, and it is crucial that they feel that they have been heard and that they have been treated fairly and listened to with care.

Chairman LEAHY. One of my predecessors as Chairman of this Committee was Senator Strom Thurmond. We had different philosophies on a number of things, but one thing I always agreed with. He always said to somebody coming on to the Federal bench that, you know, it is a lifetime appointment, you can do anything you want, but do not forget you are there for everybody in that courtroom. I am not even going to ask you that question because I have watched enough about you to know that is the way you will be.

And the last question, which is sort of the standard one, the Second Circuit opinions are binding on the district court, as are the Supreme Court's. Do you have any difficulty in applying *stare decisis* even though you might wonder in a particular case, "What the heck were they thinking?"

Justice CRAWFORD. Not at all, Senator. I work within and I have worked within a system of authority where I look to and respect the judgments of the courts above us.

Chairman LEAHY. Well, thank you.

Judge Firestone, you have presided over, I am told by Ms. Lucius, more than 700 cases. You must have had—in some ways it must be routine, but it certainly was not when you first came there. What are some of the difficulties you had to overcome?

Judge FIRESTONE. Well, I would say that the jurisdiction of the Court of Federal Claims is quite broad. It ranges from tax to contracts to Indian claims and so forth. One of the big advantages that Court has is we have the Justice Department representing the United States in every case, and as an alum of that organization, they do an excellent job in not only advocating but I would say educating the Court. And we have had excellent practitioners on the other side.

And so when you are new as a judge, you spend a lot of time educating yourself as to what is the law, and you spend a lot of time ensuring that you understand the arguments of the parties. But, interestingly enough, it is a very high quality of representation that appears on the Court, and with hard work you get to learn different things. But every case actually comes to you, I would say, pretty new. Although issues generally repeat, for the most part the reason they are in front of us is because they could not resolve it on their own and there is some twist.

And so that is actually what keeps the job fresh and challenging, as it has been for the last 15 years and, if confirmed, hopefully for the next.

Chairman LEAHY. So you find it still interesting when you come into the courtroom.

Judge FIRESTONE. I wake up every morning challenged and enjoying the job. I would say it has been the greatest privilege of my life to serve on that court.

Chairman LEAHY. I know the feeling in the job I have.

Judge FIRESTONE. I share it in a different way, but, yes, I love the work.

Chairman LEAHY. And, Ms. Griggsby, we know you so well from your past decade in the Senate, both the Ethics and the Judiciary Committees, and a trial attorney at the Department of Justice and U.S. Attorney's Office in DC and private litigation. Sort of somewhat along with what I was saying to Justice Crawford, how do you feel about how people should be treated when they come in the courtroom? You are used to walking into this room, for example. You used to walk into courtrooms. But a lot of people coming in there, it is their first time, maybe their only time. How do you feel about that?

Ms. GRIGGSBY. Thank you, Chairman Leahy, for that question. During my decade as a Justice Department attorney and my decade here in the Senate, I have always felt that you should treat people fairly, with impartiality, and with courtesy. That has always been my practice as an attorney. It was my practice as an attorney appearing before the court, and that is the practice I would have as a judge. Every citizen should feel welcome and that they are going to be treated fairly and receive justice under the law.

Chairman LEAHY. And one of the questions I had for you, Mr. Halkowski, you already answered when you spoke about your mentors as judges. But even having worked for judges, clerks and whatnot, you have now been in private litigation, and all of a sudden you are not rising when the judge comes into the courtroom. Everybody is going to be rising when you come in the courtroom. That can be a heady feeling. But how do you handle that transition and do it in such a way that you saw it being a litigant and now you would be an impartial trier of facts?

Mr. HALKOWSKI. Simply, if I am so fortunate to be confirmed, keep in mind one word really, and that is, "respect"—respect for the limited role of the courts amongst the branches of Government, and respect for the law and applying stare decisis, and so you just simply apply the law to the facts of each case. And, finally, as Ms. Griggsby alluded to, respect for each of the parties that come before you and keep an open mind and listen to them and do your best to provide justice.

Chairman LEAHY. Senator Grassley.

Senator GRASSLEY. Yes, I am going to start out with Justice Crawford and go across the table. I am going to ask you about some issues dealing with sentencing, because you have spoken on that. And at this point I do not find any fault, but I want to give you an opportunity to expand.

In 2013, you spoke to the press about sentencing practices in your State. At that time you expressed the opinion that judges

have been, as you put it, “oversentencing” criminal defendants. You also mentioned that many of those defendants should be placed into drug or mental health courts and that judges and prosecutors should focus on treatment and reconciliation instead of incarceration. So these would be—expand on those statements by saying what—by my asking what do you mean when you stated that Vermont’s criminal defendants have been oversentenced. And I have one more question.

Justice CRAWFORD. Of course, sir. Thank you. It is an important issue. Within the State court system, we see two kinds of criminal defendants, particularly in the area of drug addiction, drug abuse, and drug trafficking. We see the people that make it their living to harm our communities by selling drugs, and for those people I do not see an important change. I think the sentencing practices have been correct.

For people who are addicted and are more customers than traffickers, we have had success in Vermont. I have worked for several years in the drug court, and we have seen real change in people’s behaviors, in their ability to support their families, in their ability to return to the rest of us as honest citizens. And it is that group that I think can be directed toward treatment, directed toward drug court-type programs, which are no walk in the park—they are strict, and if you fail in your treatment, you spend the weekend in jail. It is almost a sterner model than simply putting people on probation or jailing them for short periods of time.

So what has interested me is a commitment from the courts for people who are addicted to redirecting them so that we can get them back in our midst as productive people.

Senator GRASSLEY. What are your thoughts on mandatory minimums? And can you tell us a little bit about your experiences with limitations on sentencing discretion within the Vermont judicial system?

Justice CRAWFORD. Within the State system, we have only a handful of mandatory minimums. They represent the decision, the serious decision of the legislature to treat certain offenses with particular seriousness and care. And I have always respected that decision and imposed the mandatory minimum because the legislature is in charge of that decision, and I would expect to continue to do so in the event that I am confirmed here.

Senator GRASSLEY. Then that would bring me to the Supreme Court’s *Booker* decision on Federal Sentencing Guidelines. Of course, they are no longer mandatory, so let me ask you a couple questions, and then a third one, but two at first.

What is your view on the guidelines? And do you believe that the guidelines have resulted in oversentencing of criminal defendants?

Justice CRAWFORD. I cannot tell you in a numbers kind of a way what the result of the guidelines has been within the Federal system. What I can tell you is that what I like about them is it brings out into the open the concerns about sentencing, about deterrence, about rehabilitation, about punishment, which are involved in every sentencing decision. On the State court side, those things are not always discussed in an open way in court. Sentencing guidelines compel the judge and the defendant, his attorney, and the Government to talk about them in an open way and to apply them

in a way which is more uniform from case to case. So I think those are important positive aspects of the Sentencing Guidelines.

Senator GRASSLEY. In the cases of nonviolent drug offenders or drug offenders with little or no criminal history, do you believe that downward departures would be warranted under the guidelines? Or do you think that such individuals would be better off in a drug court setting?

Justice CRAWFORD. What I can tell you, Senator, is that I have seen success for people that meet in the State system—that people that meet those criteria in a drug court setting, where they are involved for 6 or 12 months, meeting weekly, speaking as you and I are, with the judge, reporting on their progress. Whether that translates easily into the Federal system it would be difficult for me to say. I have seen it work person to person in the State court system.

Senator GRASSLEY. Okay. Then my last series of questions for you. You mentioned the importance of treatment and reconciliation during your comments to the press in 2013. Would you tell us what you meant by that statement? And then let me quickly add to that. If confirmed, would you focus on treatment and reconciliation when sentencing criminal defendants in the Federal system? And if so, how would that focus affect sentencing in your courtroom?

Justice CRAWFORD. What I have tried to do, Senator, in my sentencing practices is to look at each person as best I can as an individual and to make an individual judgment about whether incarceration is required, whether a mandated treatment program is going to be sufficient, whether a mixture of those two is appropriate. And it would be my intention to continue to—within the framework of the Sentencing Guidelines, to continue to try and make that judgment, separate out the business people who are harming our communities from the people who have fallen into drug addiction and treat those two as different types of problems.

Senator GRASSLEY. Now, the rest of you are going to feel like you are not very important if I do not ask you as many questions.

[Laughter.]

Senator GRASSLEY. But I am not going to, so do not take it personally.

For you, Lydia, the Court of Federal Claims adjudicates cases across a broad range of subject matters. Since 2006 you have served the Committee by providing advice relating to the Freedom of Information Act, the Privacy Act, the Electronic Communications Privacy Act. Could you please share how this experience might help prepare you for the Federal Claims Court if confirmed?

Ms. GRIGGSBY. Yes, thank you, Senator, for that question. During my time on the Committee, I have worked on a number of complex legal issues, including, as you mentioned, ECPA reform and FOIA reform. In the context of that work, I have had to work very closely with co-counsel and opposing counsel, various offices on the Committee, as well as stakeholders with a variety of different perspectives and competing interests. I think I have always done that in a very fair and open-minded way, and I think that those skills have equipped me well to be a fair and open-minded judge, if confirmed to the Court of Federal Claims.

Senator GRASSLEY. Okay. And, Ms. Firestone, you have now served at least one term. Aside from the knowledge of how the Court works, what have you learned during your first term that would assist you in a second term, if confirmed? And that does not mean things have to be any different, but I just wondered if they would be. And let me follow that up with how, if at all, would you change your approach in cases from what you have learned during your first time.

Judge FIRESTONE. Well, Senator, I hope after 15 years I have become a bit more efficient, and so I will say that there is—I do not intend to change the way I judge cases in any way. The oath is the same, and I will abide by that and look at each case individually and decide each one on its merits based on the facts and the law.

What it has allowed me to do after 15 years is to become more of an educator with regard to the Court, and so I have the opportunity now to do things with regard to the Judicial Conferences of our Court, with regard to our Advisory Committee, that allows me to take some of the experience that I have had and share that with new judges, and to work with judges and members of the bar to improve the administration of justice, which I think helps, having had enough experience that I can judge whether or not I think those recommendations will be valid. And I hope to continue to do that work as well in the next 15 years.

Senator GRASSLEY. Okay. In your view, Ms. Firestone, are there particular challenges facing the Court of Claims? Do you see any areas where improvement is needed? And this could be from two standpoints. One, is there any suggestions you have for Congress to make any changes? Or, number two, any changes that you would see that the Court itself could make?

Judge FIRESTONE. Well, Senator Grassley, I appreciate the question. I think that the Court is always looking to find ways to improve its administration internally, and I do not have any—we are constantly, by virtue of now the whole new change in electronic filings and things like that, the efficiency of the court system has actually improved markedly.

I would say that with regard to things for Congress I leave that to people different than myself to make those suggestions, and, indeed, that is why we have advisory committees and so forth who involve outside attorneys as well as Justice Department attorneys to make those types of suggestions to the Congress.

Senator GRASSLEY. My first question is—I am from Iowa, and you evidently have Midwest roots. Where is St. Francis, Wisconsin? [Laughter.]

Mr. HALKOWSKI. Thank you, Senator.

Senator GRASSLEY. And how big is it?

Mr. HALKOWSKI. Thank you, Senator, and I can handle that question. It is just south of Milwaukee. It is actually a suburb of Milwaukee. It is right along Lake Michigan, and its population—well, now it is a little bit smaller, but probably around 10,000.

Chairman LEAHY. You did a heck of a lot better on that answer than I ever could.

[Laughter.]

Senator GRASSLEY. Well, I was about ready to tell you, even though I am close to Wisconsin, about all I think about is Madison and Milwaukee.

Mr. HALKOWSKI. There you go.

Senator GRASSLEY. And do not tell the Green Bay Packers.

Mr. HALKOWSKI. We all suffer with having to root for Green Bay.

Senator GRASSLEY. Now, to be a little more serious, the Federal Claims Court adjudicates cases across a broad range of subject matters. What experience do you have in tax refund suits, takings cases, Government contract cases, contract claims, or other claims that come before the Court? And if you do not have any experience, I am not asking that in a negative way. I just want to know how you feel you are prepared for it.

Mr. HALKOWSKI. Sure. Thank you again, Senator. I was fortunate to clerk at the Court starting out my legal career, so I actually had a bit of experience in a broad range of cases, including tax cases and Government contracts.

I then went to the court of appeals and had, again, some experience with cases that are appealed from the Court of Federal Claims to the Federal Circuit.

Next, I went to the Justice Department where I actually litigated many, many cases in front of the U.S. Court of Federal Claims, including takings cases and some breach of trust cases involving Native American claims.

So I have a broad array of experience, and then most recently I have been in private practice and focused on intellectual property and patent claims, which, again, is a type of claim that is brought before the Court.

There are, of course, some areas that I have less experience in, and those I would just simply dig in and work a bit harder on.

Senator GRASSLEY. During your time at Justice, you defended the Federal Government in cases where plaintiffs sought compensation under the Fifth Amendment for alleged uncompensated taking. How would you transition from defender of the Federal Government to a neutral arbitrator?

Mr. HALKOWSKI. Again, thank you, Senator. My focus as a judge, should I be fortunate enough to be confirmed, would be strict fidelity to the law and, again, respecting the parties that come before me and listening with an open mind and then applying the law as it is set forth by the Supreme Court as well as the Federal Circuit, and rendering a decision based on that and taking into account no other factor.

Senator GRASSLEY. You do not have any problem with that transition?

Mr. HALKOWSKI. I do not, Your Honor. I will say also that—and maybe I was unusual. I do not know. But when I worked at the Justice Department, I always saw my role as not to win the case but to come up with an outcome that would render justice, because I felt as someone who was not only representing the Government but also representing the citizens, that would be appropriate.

Senator GRASSLEY. Last, congratulations to all of you.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. And one of the questions you asked Justice Crawford made me think, and I am now being paro-

chial as a Vermonter. You talked about our drug courts and basically diversion programs and so on. Has it not been our experience in Vermont that doing that rather than doing a one-size-fits-all in the court system has actually saved Vermont taxpayers a huge amount of money and it has kept a more productive society? Is that correct?

Justice CRAWFORD. I think that has been the case, Senator.

Chairman LEAHY. And looking at the budgets—oh, Senator Grassley. I am going to keep the hearing—no, no. I am going to keep the hearing record—I just wanted you to know I will keep the hearing record open until Friday.

And now that you have all had this enormously tough grilling, we will stand in adjournment. Thank you very much.

Justice CRAWFORD. Thank you.

Judge FIRESTONE. Thank you.

Ms. GRIGGSBY. Thank you.

Mr. HALKOWSKI. Thank you.

[Whereupon, at 10:40 a.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Judicial Nominations”

Wednesday, June 4, 2014
Dirksen Senate Office Building, Room 226
10:30 a.m.

Geoffrey W. Crawford, to be a United States District Judge for the District of Vermont

Nancy B. Firestone, to be a Judge of the United States Court of Federal Claims

Lydia Kay Griggsby, to be a Judge of the United States Court of Federal Claims

Thomas L. Halkowski, to be a Judge of the United States Court of Federal Claims

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Geoffrey William Crawford
2. **Position:** State the position for which you have been nominated.

United States District Judge for the District of Vermont
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: Vermont Supreme Court
109 State Street
Montpelier, VT 05609

Residence: Burlington, VT
4. **Birthplace:** State year and place of birth.

1954; Ann Arbor, MI
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1977 – 1980, Harvard Law School; J.D. (*cum laude*), 1980

1972 – 1973, 1974 – 1977, Yale University; B.A. (*cum laude*), 1977
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2013 – present
Vermont Supreme Court
109 State Street
Montpelier, VT 05609
Associate Justice

September – June 2013
The Blue Bird Tavern
86 St. Paul Street
Burlington, VT 05401
Unpaid prep cook

2002 – 2013
State of Vermont
Vermont Superior Court
109 State Street
Montpelier, VT 05609
Superior Court Judge

2000 – 2001
The Iron Wolf
86 St. Paul Street
Burlington, VT 05401
Unpaid prep cook

1987 – 2002
O'Neill, Crawford & Green
159 Bank Street
Burlington, VT 05401
Partner

1984 – 1987
Manchester & O'Neill
95 Saint Paul Street
Burlington, VT 05401
Associate

1981 – 1984
Burlingham, Underwood & Lord
(firm dissolved)
New York, NY
Junior Associate

1980 – 1981
United States District Court for the District of Vermont
11 Elmwood Avenue

Burlington, VT 05401
Law clerk to the Honorable Albert W. Coffrin

Summer 1980
Palmer and Dodge
One Beacon Street
Boston, MA 02199
Summer law clerk

Summer 1979
Cades, Schutte, Fleming and Wright
100 Bishop Street
Honolulu, HI, 96813
Summer law clerk

Summer 1978
American Civil Liberties Union
4301 Connecticut Avenue, NW
Washington, D.C. 20008
Summer law clerk

Summer 1977
Bickel/Weed family
Nauset Heights Road
Orleans, MA 02653
Personal Chef/Cook

Other affiliations (uncompensated):

2010 – present
New England Organ Bank
60 First Avenue
Waltham, MA 02451
Board Member (2010 – present)
Vice-Chair (2013 – present)

2010 – present
Dismas of Vermont (Burlington Board)
103 East Allen Street
Winooski, VT 05404
Board Member (2010 – present)
Board President (2012 – 2013)

1993 – 2002
Fletcher Free Library
235 College Street

Burlington, VT 05401
Board Member (1993 – 1996)
Chair (1996 – 2002)

1991 – 1993
Green Mountain Audubon Society
255 Sherman Hollow Road
Huntington, VT 05462
Board Member

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served. I did timely register for Selective Service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Dismas of Vermont, Rev. Jack Hickey Award (2014)
Mercy Connections, Catherine McAuley Award (2008)
Howard Center, Thibodeau-Wall Award for Community Service (2008)
Harvard Law School, Board of Student Advisors (1978 – 1980)
Harvard Law School, Student Funded Fellowships (1978 – 1980)
Yale College, Departmental Honors in English (1977)
Yale College, Scroll and Key Society (1976 – 1977)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (1984 – 2002)
American Maritime Law Association (1981 – 1984)
American Trial Lawyers Association (now named American Association for Justice)
(1984 – 2002)
State Delegate (1986 – 1990)
Central Vermont Inns of Court, (2003 – 2004, 2013 – present)
New York Bar Association (1981 – 1984)
Vermont Bar Association (1981 – 2002)
Vermont Judicial Conduct Board (2009 – 2013)
Vermont Supreme Court Advisory Committee on Rules of Civil Procedure (2003 – 2011)
Vermont Supreme Court Advisory Committee on Criminal Rules (2014 – present)
Vermont Supreme Court Liaison member

Vermont Supreme Court Advisory Committee on Criminal Oversight (2014 – present)
 Vermont Supreme Court Liaison member
 Vermont Trial Lawyers Association (now named the Vermont Association for Justice)
 (1984 – 2002)
 Vermont Trial Judges Association (2002 – 2014)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Massachusetts, 1980 (inactive)
 New York, 1981 (inactive)
 Vermont, 1984

There have been no lapses in membership, although as indicated, my memberships in Massachusetts and New York are inactive.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Second Circuit, 1995
 United States District Court for the Northern District of New York, 1981
 United States District Court for the Southern District of New York, 1981
 United States District Court for the Eastern District of New York, 1981
 United States District Court for the Western District of New York, 1981
 United States District Court for the District of Vermont, 1984

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Burlington Tennis Club (1989 – 2002)
 Burlington Committee on Open Government (2008)
 Dismas of Vermont, Burlington (2010 – present)
 Board Member (2010 – present)
 Local President (2012 – 2013)

Fletcher Free Library (1993 – 2002)
 Board Member (1993 – 2002)
 Chair (1996 – 2002)
 Green Mountain Audubon Society (1984 – 1998)
 Board Member (1991 – 1993)
 New England Organ Bank (2010 – present)
 Vice-Chair (2013 – present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Between November 2009 and February 2012, I wrote a wine blog. I am the sole author. The blog reviews individual bottles of wine and makes an effort to provide some historical context (without losing all the fun.) The blog is located at Tutawine.com. A copy of the entire content is attached.

Geoffrey Crawford, *Making a Case for Civil Justice System*, Burlington Free Press (1995). Copy supplied.

James Spink and Geoffrey Crawford, *Trial Advocacy in Vermont*, National Business Institute (1990). Copy supplied.

Note, *The Fire Statute: Burden of Proving the Shipowner's "Design or Neglect" is on the Cargo Interests*, 14 J. MAR. L. & COM. 118 (1983). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If

you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Annual Reports of Vermont Civil Rules Committee (2006 – 2011). Copies supplied. I have been unable to obtain reports from previous years.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

May 7, 2014: Testimony at Judicial Confirmation Hearing before the Vermont Senate Judiciary Committee for appointment as an Associate Justice, Vermont Supreme Court. Recording supplied.

February 5, 2014: Testimony at House Judiciary Committee hearing on H.731 and H.545. Recording supplied.

February 9, 2010: Testimony at House Judiciary Committee hearing on mediation in foreclosure cases. Recording supplied.

February 26, 2009: Testimony at Judicial Retention Hearing before the Joint Committee on Judicial Retention. Recording supplied.

February 19, 2009: Testimony at Judicial Retention Hearing before the Joint Committee on Judicial Retention. Recording supplied.

February 11, 2009: Testimony at Judicial Retention Hearing before the Joint Committee on Judicial Retention. Recording supplied.

October 2008: Burlington Committee on Open Government's Report to City Council. Copy supplied.

March 12, 2003: Testimony at Judicial Retention Hearing before the Joint Committee on Judicial Retention. Recording supplied.

February 27, 2003: Testimony at Judicial Retention Hearing before the Joint Committee on Judicial Retention. Recording supplied.

February 19, 2003: Testimony at Judicial Retention Hearing before the Joint Committee on Judicial Retention. Recording supplied.

January 24, 2003: Testimony at Judicial Confirmation Hearing before the Vermont Senate Judiciary Committee for appointment as a Superior Court Judge. Recording supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

May 9, 2014: Panelist, "Tips for Appellate Practice," Vermont Association for Justice, Burlington, VT. Notes supplied.

April 14, 2014: Speaker, Undergraduate Course on Legal Issues, "Life of a Trial Lawyer," Champlain College, Burlington, VT. Notes supplied.

April 5, 2014: Awards address, Dismas of Vermont, Burlington, VT. Notes and video recording available at: <http://www.cctv.org/watch-tv/programs/burlington-dismas-house-annual-dinner-auction>.

March 20, 2014: Speaker, Bridge the Gap Program, Vermont Bar Association Mid-Year Meeting, Hilton Hotel, Burlington, VT. Handout supplied.

March 18, 2014: Panelist, "Electronic Discovery" and "Access to Vermont Court Records On-Line," Central Vermont Inns of Court, Richmond, VT. Notes supplied.

October 16, 2013: Speaker, swearing-in ceremony for Vermont Supreme Court, Burlington, VT. Remarks and press coverage supplied and video available at <http://www.wcax.com/story/23705080/judge-crawford-to-be-sworn-in-as-supreme-court-justice>.

March 2013: Speaker, Bridge the Gap Program, Vermont Bar Association Mid-Year Meeting, Sheraton Hotel, South Burlington, VT. I have no notes, transcript or recording but my remarks would have been substantially similar to those I made at the event on March 20, 2014, for which a handout has been supplied.

June 2012: Speaker, "Literature and the Law," Scrivener's Quill, Burlington, VT. Notes supplied.

June 2012: Speaker, Annual Vermont Judicial College, Vermont Supreme Court, Vergennes, VT. The presentation was on recent civil decisions by the Vermont Supreme Court. I have no notes, transcript or recording. The address of the Vermont Supreme Court is 109 State Street, Montpelier, VT 05609.

March 2012: Speaker, Bridge the Gap Program, Vermont Bar Association Mid-Year Meeting, Hilton Hotel, Burlington, VT. I have no notes, transcript or recording but my remarks would have been substantially similar to those I made at the event on March 20, 2014, for which a handout has been supplied.

January 27, 2012: Panelist, Continuing Legal Education: Blockbuster Evidence Seminar, Vermont Association for Justice, Burlington, VT. Notes and video supplied.

January 14, 2012: Panelist, "A Fresh Look at the Public Records Act," Vermont Bar Association, Mid-Winter Thaw, Montpelier, VT. The presentation concerned recent rulings and developments in the area of transparency and access to public records. I have no notes, transcript or recording. The address for the Vermont Bar Association is 35-37 Court Street, Montpelier, VT 05602.

December 14, 2010, Panelist, "Atticus Finch and the Professional Practice of Law," Vermont Bar Association, Montpelier, VT. The other panelists and I led a group discussion of the character Atticus Finch as a role model and influence in our own lives. I have no notes, transcript or recording. The address for the Vermont Bar Association is 35-37 Court Street, Montpelier, VT 05602.

September 10, 2010: Speaker, "Role of the Judge in Drug Court," United States Attorney's Office, Burlington, VT. Video supplied.

June 2010: Speaker, Presentation on Judicial Ethics, Annual Vermont Judicial College, Vermont Supreme Court, Basin Harbor Club, Vergennes, VT. Remarks supplied.

February 2010: Speaker, "Vermont Guardian Ad Litem in the 21st Century," Vermont Bar Association. I discussed the role of the GAL in Family Court. I have no notes, transcript or recording, but press coverage is supplied. The address for the Vermont Bar Association is 35-37 Court Street, Montpelier, VT 05602.

Approximately 2006 – 2009: Speaker, Law Day, Burlington School District, Burlington, VT. I would discuss the American legal system and answer questions from elementary school students. I have no notes, transcript or recording. The address of the Burlington School District is 150 Colchester Avenue, Burlington, VT 05401.

April 3, 2009: Panelist, Continuing Legal Education: Views from the Bench and Jury Box, Vermont Association for Justice, Burlington, VT. This panel discussion concerned common problems and issues in attorney performance as seen by judges and a former juror. I have no notes, transcript or recording. The address of the Vermont Association for Justice is 1 Main Street, Burlington, VT 05401.

March 19, 2009: Panelist, Continuing Legal Education Seminar: Handling Medical Malpractice Cases, Vermont Association for Justice, Burlington, VT. This event concerned issues experienced by practitioners in presenting medical malpractice cases. I have no notes, transcript or recording. The address of the Vermont Association for Justice is 1 Main Street, Suite 305, Burlington, VT 05402.

June 5, 2008: Speaker, "Big Night," Howard Center, Burlington, Vermont. Remarks and press coverage supplied.

May 8, 2008: Panelist, Vermont Association for Justice Annual Conference: Case Obstacles Panel, Vermont Association for Justice, Burlington, VT. This was a "practice pointer" event intended for attorneys involved in litigation. I have no notes, transcript or recording. The address of the Vermont Association for Justice is 1 Main Street, Suite 305, Burlington, VT 05402.

May 8, 2008: Speaker, Mercy Connections Annual Meeting, recipient of the Catherine McAuley Award, Burlington, VT. Remarks supplied.

June 16, 2006: Moot Court Participant, Moot Court Reenactment of the Extradition Trial of Bennett Young, Vermont Bar Association, Barre, VT. I have no notes, transcript or recording, but press coverage is supplied. The address of the Vermont Bar Association is 35-37 Court Street, Montpelier, VT 05602.

June 2004: Speaker, Annual Vermont Judicial College, Vermont Supreme Court, Bread Loaf Campus, Ripton, VT. This was a presentation on claims of intentional infliction of emotional distress. I have no notes, transcript or recording. The address of the Vermont Supreme Court is 109 State Street, Montpelier, VT 05609.

Approximately 2000 – 2002: Speaker, Law Day, Burlington School District, Burlington, VT. I would discuss the American legal system and answer questions from elementary school students. I have no notes, transcript or recording. The address of the Burlington School District is 150 Colchester Avenue, Burlington, VT 05401.

January 29, 1991: Speaker, Evidence in Trial Practice, National Business Institute, Burlington, VT. I discussed practical evidentiary problems at trial. I have no notes, transcript or recording. The address of the National Business Institute is 1218 McCann Drive, Altoona, WI 54720.

March 23, 1990: Speaker, Trial Advocacy, National Business Institute Burlington, Vermont. I discussed the preparation and presentation of personal injury trials. I have no notes, transcript or recording. The address of the National Business Institute is 1218 McCann Drive, Altoona, WI 54720.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Donoghue, Mike, *Crawford Recommended for Judgeship on Vermont's U.S. District Court*, Burlington Free Press, March 24, 2014. Copy supplied.

Donoghue, Mike, *Two Named Finalists for Federal Judgeship in Vermont*, Burlington Free Press, March 13, 2014. Copy supplied.

With Wit and Intellect, Burlington Free Press, October 17, 2013. Copy supplied.

Governor Shumlin Appoints Judge Geoffrey Crawford to Vt. Supreme Court, St. Albans Messenger, September 21, 2013. Copy supplied.

Hirschfeld, Peter, *Crawford Elevated to Vt. High Court*, The Times Argus, September 21, 2013. Copy supplied.

Crawford Appointed to the Vermont Supreme Court, Burlington Free Press, September 20, 2013. Copy supplied.

Nancy Remsen, *Governor Peter Shumlin Names Geoffrey Crawford to Vermont Supreme Court*, Vermont Buzz, September 20, 2013. Copy supplied.

Vermont Public Radio, "Plans for Recount are Finalized," September 3, 2010. Article and audio recording available at:
http://www.vpr.net/news_detail/88751/interview-plans-for-recount-are-finalized/.

Vanessa Kittell and Erin Heins, *Mastering the Rules of Evidence: A Pragmatic View*, Vermont Association for Justice Spring 2012 newsletter. Copy supplied.

Huff, Mel, *A Judge Who Sees Clients, Not Offenders*, Summer 2009. Copy supplied.

Howard Center to Hold Big Night on Thursday, Burlington Free Press, May 31, 2008. Copy supplied.

Adam Silverman, *Vermont Justices Hit the Road*, Burlington Free Press, October 22, 2007. Copy supplied.

Kevin Picard, *A Kinder Court: Chittenden County rethinks its approach to Mentally Ill Offenders*, Seven Days, December 6, 2006. Copy supplied.

Associated Press, *Burlington Retailer Agrees to Turn Down Music to Abide by City Ordinance*, September 27, 2000. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Between 1990 and 2000, I served as an acting judge in the small claims division of the Chittenden Superior Court, Burlington, Vermont. This was a volunteer position, in which I was appointed by the Administrative Judge for the Trial Courts. I served as needed, approximately six to eight times per year. Between 1992 and 1994, I served as a temporary hearing officer for the Vermont Department of Labor and Industry in Montpelier, Vermont hearing workers compensation appeals. I was appointed by the Commissioner of Labor and Industry (now the Department of Labor). I heard six cases and provided a recommended decision in each case to the Commissioner.

I was appointed as a Vermont Superior Court judge by Governor Howard Dean in November 2002 and confirmed by the Vermont Senate in 2003. I was retained in 2003 and 2009 by a vote of both houses of the Vermont legislature. The Vermont Superior Court is a general jurisdiction trial court including civil, family and criminal divisions. My time was divided evenly among these three divisions.

I was appointed as a Vermont Supreme Court associate justice by Governor Peter Shumlin in October 2013 and confirmed by the Vermont Senate in May 2014. The Vermont Supreme Court is the appellate court for all Vermont trial courts and certain state agencies.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I presided over several hundred cases in the 11 years that I served as a state trial judge. The majority were bench trials, such as divorces, juvenile cases, mental health commitment and involuntary cases, property tax appeals, and civil cases with no jury demand. My time was divided among family, criminal and civil divisions in roughly equal proportions. There are no jury trials in the family division. In the criminal and civil divisions, I tried six to eight jury trials to verdict per year.

- i. Of these, approximately what percent were:

jury trials:	15%
bench trials:	85%
civil proceedings:	65%
criminal proceedings:	35%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

Since joining the Vermont Supreme Court in October 2013, I have written 11 decisions. The citations are:

Pahnke v. Pahnke, 2014 VT 2 (2014)

In re Bjerke Zoning Permit Denial, 2014 VT 13 (2014)

Lathrop v. Town of Monkton, 2014 VT 9 (2014)

Paine v. Buffa, 2014 VT 10 (2014)

State v. Reynolds, 2014 VT 16 (2014)

In re Grievance of John Aleong, 2014 VT 15 (2014)

In re Programmatic Changes to the Standard-Offer Program, 2014 VT 29 (2014)

Cameron v. Rollo, 2014 VT 40 (2014)

Hament v. Baker, 2014 VT 39 (2014)

Lasek v. Vermont Vapor Inc., 2014 WL 33 (2014)

Stone v. Town of Irasburg, 2014 VT 43 (2014)

Prior to joining the Vermont Supreme Court, I wrote two dissenting opinions while sitting by designation:

Vermont Studio Center, Inc. v. Town of Johnson, 2010 VT 59, 188 Vt. 223, 5 A.3d 904 (2010)

DeSantis v. Pegues, 2011 VT 114, 190 Vt. 457, 35 A.3d 152 (2011)

Although Vermont trial court decisions are not published, there is an informal database located at <https://www.vermontjudiciary.org/MasterPages/tcdecisioncvl.aspx>. These decisions also appear in Westlaw. Decisions are submitted on an occasional basis. The list of my decisions in that database is:

Heco v. Johnson Controls, Inc., No. S0869-10 CnC, 2013 WL 6978697 (March 14, 2013); 2013 WL 2155550 (May 15, 2013); 2013 WL 6978689 (June 4, 2013); 2013 WL 6978688 (June 11, 2013); 2013 WL 6978661 (June 17, 2013); 2013 WL 6978662 (July 24, 2013); 2013 WL 6978667 (Nov. 1, 2013).

Mylan Technologies, Inc. v. Zydus Noveltech, Inc., No. S0041-09 CnC, 2012 WL 609864 (Feb. 15, 2012); 2012 WL 3638877 (Aug. 9, 2012); 2012 WL 5830108 (Oct. 2012); 2012 WL 6760836 (Dec. 21, 2012); 2013 WL 4478936 (June 10, 2013)

Aurora Loan Services, LLC v. Kirkpatrick, No. S0498-09 CnC, 2013 WL 3288062 (June 2013)

Alvarez v. Katz, No. 536-5-13 Cncv, 2013 WL 3288061 (May 31, 2013)

Osier v. City of Burlington, No. S1588-09 CnC, 2013 WL 1943095 (Apr. 30, 2013)

Technine, Inc. v. Simonds, No. S1210-09 CnC, 2013 WL 6978695 (March 27, 2013)

Demag v. Better Power Equipment, Inc., No. S955-11 CnC, 2013 WL 6978727 (March 7, 2013)

JW, LLC v. Ayer, No. S0721-12 CnC, 2013 WL 4860127 (Feb. 22, 2013)

Walsh v. Cluba, No. S0022-10 CnC, 2013 WL 1926373 (Feb. 21, 2013)

In re Robert Jones, No. S0036-09 CnC, 2013 WL 1926352 (Feb. 19, 2013)

Vt. Fed. Credit Union v. Noel, S0703-12 CnC, 2013 WL 861568 (Feb. 8, 2013)

Hoplite, LLC v. Catholic Univ. of Am., No. 1226-12-12 Cnsc, 2013 WL 592026 (Feb. 7, 2013)

Wake Robin Corp. v. Town of Shelburne, No. S0133-11 Cnc, 2013 WL 2295855 (Jan. 14, 2013)

Moraska v. Moraska, No. S0279-11 CnC, 2012 WL 6760837 (Dec. 10, 2012)

Atkins v. City of Burlington School Dist., No. S0463-11 CnC, 2012 WL 6649356 (Dec. 2012)

In re Burt Allen, No. S0898-10 CnC, 2012 WL 5830094 (Nov. 2012)

Clarendon & Pittsford R.R. Co. v. Richardson, No. S0071-09, 2012 WL 8133602 (Oct. 30, 2012)

Prive v. Vt. Asbestos Group, No. S1216-07 CnC, 2012 WL 8978099 (Oct. 11, 2012)

Mahoney v. Tara, LLC, No. S1543-07 CnC, 2012 WL 5379926 (Oct. 5, 2012)

Gero v. Davis, No. S0513-12 CnC, 2012 WL 5830109 (Oct. 2012)

Demarest v. Town of Underhill, No. S0937-10 Cnc, 2012 WL 8418573 (Sept. 7, 2012)

Fenton v. Bernstein, No. S0814-10 CnC, 2012 WL 4294070 (Aug. 31, 2012)

Mathieu v. Town of Westford, No. S0354-12 CnC, 2012 WL 3638920 (Aug. 13, 2012)

In re Colchester Leased Land Appeals, No. S1297-11, 2012 WL 9092646 (Jul. 19, 2012)

Marasch v. Trepanier, No. S1020-08 CnC, 2012 WL 2946710 (Jun. 19, 2012)

Cate v. City of Burlington, No. S0302-10 CnC, 2012 WL 8393560 (May 23, 2012)

Lafrance Arch. v. PointFive Dev. S. Burlington LLC, No. S0640-11 CnC, 2012 WL 8978072 (Apr. 27, 2012)

In re Ellen Ducharme, No. S0319-10 CnC, 2012 WL 3064515 (Feb. 10, 2012)

Johnson v. Fletcher Allen Health Care, No. S1508-08 CnC, 2012 WL 3064511 (Jan. 26, 2012)

Green Mountain Nursing Home v. Carlisle, No. S1568-10 CnC, 2012 WL 3134497 (2012)

Acquired Capital I, L.P. v. Griffin, No. 916-11 CnC, 2011 WL 8472945 (Dec. 1, 2011)

Regan v. Pomerleau, No. S0239-11 CnC, 2011 WL 8472944 (Oct. 27, 2011)

Foti Fuels, Inc. v. Kurrle Corp., Nos. 326-5-09 Wncv, 149-3-10 Wncv, 2011 WL 9159803 (Jul. 20, 2011)

S.C. Ireland Concrete Const. Corp. v. Dep't of Taxes, No. 925-12-10 Wncv, 2011 WL 8472938 (Jul. 1, 2011)

Northern Security Ins. Co. v. Pratt, No. 838-11-10 Wncv, 2011 WL 8472930 (May 19, 2011)

Vt. Small Business Dev. Corp. v. Fifth Son Corp., No. 293410, 2011 WL 10949238 (Mar. 31, 2011)

Vt. Human Rights Commission v. State, No. 32-1-10 Wncv, 2011 WL 1732771 (Feb. 7, 2011)

Emery v. Shell Oil Co., No. 80-2-09 Wncv, 2011 WL 197654 (Jan. 14, 2011)

Vt. State Employees Ass'n v. Vt. Agency of Nat. Res., Nos. 517-7-10 Wncv, 518-7-10 Wncv, 2011 WL 121649 (Jan. 6, 2011)

State v. Green Mountain Future, No. 758-10-10 Wncv, 2011 WL 8472923 (2011)

North Country Fed. Credit Union v. Carpenter, Nos. 392-6-10 Wncv, 2010 WL 8357562 (Nov. 23, 2010)

Voog v. Pallito, No. 174-3-10 Wncv, 2010 WL 6593300 (Nov. 5, 2010)

Wood v. Pallito, Nos. 947-12-09 Wncv et al., 2010 WL 4567692 (Nov. 3, 2010)

Rutland Herald v. Vt. State Police, No. 595-8-10 Wncv, 2010 WL 8544457 (Nov. 2, 2010)

Franco v. Tremblay, No. 740-10-10 Wncv, 2010 WL 4567691 (Oct. 27, 2010)

McGoff v. Acadia Ins. Co., No. 192-3-07 Wncv, 2010 WL 4064963 (May 7, 2010)

City of Montpelier v. Barnett, No. 145-3-10 Wncv, 2010 WL 6588550 (Aug. 25, 2010)

Coutu v. Town of Cavendish, No. 911-12-09 Wncv, 2010 WL 3302168 (Mar. 26, 2010)

Gundlah v. Pallito, No. 180-3-09 Wncv, 2010 WL 2259002 (Mar. 18, 2010)

Montpelier School Dist. v. Morrison-Clark, Inc., No. 540-7-09 Wncv, 2010 WL 1943801 (Mar. 8, 2010)

Felix v. Spaulding High School Union Dist., No. 411-6-08 Wncv, 2010 WL 1935670 (Mar. 3, 2010)

McGee v. State, No. 733-11-06 Wncv, 2010 WL 2324108 (Feb. 12, 2010)

Barraby v. Vt. State Employees Ass'n, No. 342-6-05 Wncv, 2010 WL 1943800 (Jan. 29, 2010)

Rand v. AJ's Sunoco, No. 438-6-09 Wncv, 2010 WL 1935672 (Jan. 28, 2010)

Weiler v. Hooshiari, No. 129-2-08 Wncv, 2009 WL 6769853 (Dec. 8, 2009)

State v. OneBeacon Am. Ins. Co., No. 485-7-07 Wncv, 2009 WL 6557344 (Nov. 5, 2009)

Campbell v. Stafford, No. 689-10-07 Wncv, 2009 WL 6565305 (Oct. 20, 2009)

Kane v. Lamothe, No. S 41-05 FC, 2006 WL 4958603 (Mar. 30, 2006)

State v. Swift, Nos. 1191-8-00 Wncr, 2006 WL 2627322 (Mar. 24, 2006)

Yates v. Cioffi, No. S 236-05 Fe, 2006 WL 4958602 (Feb. 17, 2006)

Atkins v. Labarge, No. S662-03 CnC, 2006 WL 4958605 (Feb. 16, 2006)

Gregoire v. Gregoire, No. S317-05 CnC, 2006 WL 7090950 (Feb. 2, 2006)

Sperling v. Allstate Indem. Co., No. 1393-04 CnC, 2006 WL 4911249 (Jan. 18, 2006)

Gabree v. Beauregard, No. S 343-04 Fe, 2005 WL 6369943 (Dec. 9, 2005)

Day v. Sullivan, No. 812-12-02 Wncv, 2004 WL 5025144 (Dec. 16, 2004)

Bettis v. George, No. 424-8-03 Wncv, 2004 WL 5575819 (Jul. 1, 2004)

Vt. Agency of Nat. Res. v. Wellman, No. 101-6-04 Vtec, 2004 WL 5452901 (Vt. Env'tl. Ct. 2004)

Levine v. Wyeth, No. 670-12-01 Wncv, 2004 WL 5456809 (July 30, 2004)

Drown v. Granite Importers, Inc., No. 217-4-02 Wncv, 2004 WL 6033879 (Jan. 28, 2004)

Badgley v. Walton, No. 538-11-02 Wmcv, 2003 WL 25941246 (Apr. 30, 2003)

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name

and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *State v. Williams*, No. 3624-8-06 CnCr. (Unpublished decisions supplied.)

This criminal case was tried in Chittenden District Court in 2008. It concerned a shooting in Essex Junction that left two people dead and two seriously injured. The case raised many issues, including suppression of the defendant's statements to police, questions of competency and sanity, and the elements of the lesser-included offense of manslaughter. After a week-long jury trial, the defendant was convicted of first degree homicide. I imposed a life sentence without parole. The judgment was affirmed in *State v. Williams*, 188 Vt. 413 (2010).

State's counsel was Mary Morrissey, Chittenden Co. State's Attorney's Office, 32 Cherry Street, Burlington, VT 05401, 802.863.2865.

Defendant's counsel was Margaret Jansch, Chittenden Co. Public Defender, 192 College Street, 3rd Floor, Burlington, VT 05401, 802.863.6323.

2. *State v. Green Mountain Future*, No. 758-10-10 WnCv, 2011 WL 8472923.

This civil case concerned the application of Vermont campaign finance disclosure requirements to a PAC operated by the Democratic Governors Association. I found the statute to be constitutional, and I imposed a civil fine for the PAC's failure to register. On appeal, the Vermont Supreme Court affirmed my ruling on the constitutionality of the campaign finance statute. The Court identified an additional factor to be considered in setting the level of the fine, and remanded as to this aspect of the case. See *State v. Green Mountain Future*, 2013 Vt. 87 (2013). The parties later reached a settlement on an increased fine.

State's counsel were Megan Shafritz and Eve Jacobs Carnahan, Vermont Attorney General's Office, 109 State Street, Montpelier, VT 05609, 802.828-3187.

Defendant's counsel was Joshua Diamond, P.O. Box 1460, Montpelier, VT 05601, 802.223.6182.

3. *Levine v. Wyeth*, No. 670-12-01 WnCv, 2004 WL 5456809, *aff'd*, 183 Vt. 76 (2006), *aff'd*, 555 U.S. 555 (2009).

This was a tort case arising from the loss of a medical patient's arm following a prescription drug injection. The case resulted in a jury verdict of \$8 million. I was assigned to the case shortly before trial when it was discovered that the presiding judge had a conflict. I was responsible for drafting the charge and overseeing the week-long trial. My principal responsibility, however, was ruling

on the post-trial motion for judgment as a matter of law. The motion raised questions of federal preemption relating to FDA approval of pharmaceutical labeling. The U.S. Supreme Court affirmed the ruling at the trial court and state supreme court level that the FDA action did not preempt state tort law remedies.

Plaintiff's counsel was Richard Rubin, 237 N. Main Street, Suite 3, Barre, VT 05641, 802.479.2514.

Defendant's local counsel was R. Joseph O'Rourke, P.O. Box 310, Rutland, VT 05702, 802.786.1010.

4. *Trudell v. State*, No. 612-8-10 Wn Cv (unpublished decision supplied), *aff'd* by 2013 VT 18, ____ Vt. ____, 71 A.3d 1235 (Vt. 2013).

This case in Washington Superior Court challenged the early deadline for independent candidate registration for state-wide office in Vermont. As a result of federal election law requirements growing out of the Iraq war, Vermont moved the date for its primary elections into late August. At the same time, it moved the registration deadline for all candidates, including independent and small party candidates not running to primaries, to a date in June. Several independent candidates challenged the rule as an unnecessary burden on the exercise of their right to run for office. I upheld the legislation. The Vermont Supreme Court affirmed, agreeing that the deadline was a reasonable measure that did not unduly burden independent candidates.

Plaintiff's counsel was Charles Merriman, P.O. Box 1440, Montpelier, VT 05601, 802.223.1112 x104.

Defendant's counsel was Keith Aten, P.O. Box 1278, Montpelier, VT 05601, 802.225.6495.

5. *Heco v. Johnson Controls*, No. 869-10 Cn Cv. Multiple trial court rulings appear at 2013 WL 6978697, 2013 WL 2155550, 2013 WL 6978689, 2013 WL 6978688, 2013 WL 6978661, 2013 WL 6978662, 2013 WL 6978667.

This was a products liability case brought against the manufacturer of a car seat in Chittenden Superior Court, Civil Division. The case was filed by a motorist who alleged that the driver's seat failed to protect her from quadriplegic injury in a rear-end collision. It raised issues of component manufacturer liability, indemnification of the auto manufacturer, seat belt use and admission of expert testimony. After a two-week trial, the jury rendered a verdict of approximately \$43 million for the plaintiff. It is currently on appeal.

Plaintiff's counsel were James Gilbert, 5400 Ward Road, Suite 200, Arvada, CO 80002, 303.431.1111, and Robert Langdon, 911 Main Street, Lexington, MO 64067, 800.397.4910.

Defendant's counsel were Richard Wray, Reed Smith, 10 S. Wacker Drive, #4000, Chicago, IL 60606, 312.207.3891, and Thomas McCormick, P.O. Box 638, Burlington, VT 05402, 802.863.3494.

6. *In Re Ambassador Ins. Co.*, No. S444-83 WnCv. (Unpublished decision supplied.)

This is a long-running insurance insolvency in Washington Superior Court. I was specially assigned to the case from 2009 until I left the trial court. During that period, I heard and decided the bar date issue, which set a deadline for claims in one of Vermont's oldest cases. The bar date established a deadline for policyholders to give notice of claims against their companies. It was the first step in bringing a case that has been pending for 30 years to an orderly close. The bar date ruling is currently on appeal to the Vermont Supreme Court.

Counsel of insurer was George K. Bernstein, 5335 Wisconsin Avenue NW, Ste. 440, Washington, D.C. 20015, 202.452.8010.

Parties opposing the bar date were represented by Andre Bouffard, P.O. Box 190, Burlington, VT 05402, 802.863.2375.

7. *Wake Robin Corp. v. Town of Shelburne*, No. SO133-11 CnC. (Unpublished decision supplied.)

This was a property tax appeal in Chittenden Superior Court filed by a large retirement community, which included independent living and nursing care facilities. The case presented complex issues of business appraisal. These included the requirement that the appraisal exclude "going concern" value not related to the value of the land and buildings. Since the appraisers relied to a large extent on income-based methods, it was difficult for both sides to develop a satisfactory methodology for separating out income from the service or caregiving side of the business. My decision set the appraised value of the retirement community at \$40 million for property tax purposes. My decision issued in December 2012. It was not appealed.

Plaintiff's counsel was Eric Miller, P.O. Box 66, Burlington, VT 05402, 802.864.9891.

Defendant's counsel was Robert Fletcher, P.O. Box 1507, Burlington, VT 05402, 802.660.2555 x214.

8. *Drumheller v. Drumheller*, No. 668-9-04 CnFc, (unpublished decision supplied), *aff'd in part, rev'd in part*, 185 Vt. 417 (2009).

This was a divorce case in Chittenden Family Court that raised significant appraisal issues in the context of a large marital estate. The division of property between the spouses required that I value a large national printing company and the underlying real estate. It was the first reported case in Vermont concerning the valuation of an "ESOP" corporation, which is a company whose shares are held by its employees. The appellate decision affirmed the trial court on almost all issues and established principles of business and real estate appraisal that were unsettled. The case was remanded for further consideration of the parties' children's savings accounts.

Plaintiff's counsel was Karen McAndrew, P.O. Box 988, Burlington, VT 05402, 802.864.5751.

Defendant's counsel was Robert O'Neill, P.O. Box 369, Burlington, VT 05402, 802.658.0220.

9. *Century Partners, LP v. Lesser Goldsmith Enterprises*, No. 1116-04 CnC (unpublished decisions supplied), *aff'd*, 184 Vt. 215 (2008).

This was a commercial lease dispute filed in Chittenden Superior Court that raised novel questions under Vermont law concerning the application of the implied covenant of good faith and fair dealing. The case concerned a claim by the landlord that the commercial tenant, the operator of a natural foods grocery store, had failed to obtain zoning approval for certain modifications. Because the landlord had blocked zoning permission by refusing to sign an application for a building permit, I ruled that the landlord's actions violated the implied duty to cooperate in good faith. My opinion was affirmed on appeal.

Plaintiff's counsel was Christina Jensen, P.O. Box 728, Burlington, VT 05402-0728, Burlington, VT 05402, 802.864.5756.

Defendant's counsel was Robert O'Neill, P.O. Box 369, Burlington, VT 05402, 802.658.0220.

10. *In re Racine*, No. 619-8-10 Wncv, (Vt. Super. Ct.)

This case was the state-wide recount for the Democratic primary race in 2010. The Washington Superior Court, where I was the presiding judge, is by statute the court which oversees state-wide counts. I convened a meeting of the four candidates and reached agreement on the process. The clerk and I were responsible for overseeing the vote count in our own county and collecting and tallying the vote counts from the other 13 counties. Over the course of a week-long vote count, there were no significant disputes. The winner, then State

Senator Peter Shumlin, now serves as governor. Other candidates included Deb Markowitz, now Secretary of the Agency of Natural Resources and Douglas Racine, now Secretary of Administration.

The candidates represented themselves.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Levine v. Wyeth*, No. 670-12-01 Wncv, 2004 WL 5456809 (July 30, 2004), *aff'd* by 2006 VT 107, 183 Vt. 76, 944 A.2d 179, *aff'd* by 555 U.S. 555 (2009).

Plaintiff's counsel was Richard Rubin, 237 N. Main Street, Suite 3, Barre, VT 05641-4124, 802.479.2514.

Defendant's local counsel was R. Joseph O'Rourke, P.O. Box 310, Rutland, VT 05702, 802.786.1010.

2. *State v. Green Mountain Future*, No. 758-10-10 Wncv, 2011 WL 8472923 (2011), *aff'd in part and reversed and remanded in part* by 2013 Vt. 87 (2013).

State's counsel were Megan Shafritz and Eve Jacobs Carnahan, Vermont Attorney General's Office, 109 State Street, Montpelier, VT 05609, 802.828-3187.

Defendant's counsel was Joshua Diamond, P.O. Box 1460, Montpelier, VT 05601, 802.223.6182.

3. *State v. Williams*, No. 3624-8-06 CnCr (unpublished motion to suppress decision previously supplied in response to 13c), *aff'd* by 2010 VT 83, 188 Vt. 413, 8 A.3d 1053 (Vt. 2010).

State's counsel was Mary Morrissey, Chittenden Co. State's Attorney's Office, 32 Cherry Street, Burlington, VT 05401, 802.863-2865.

Defendant's counsel was Margaret Jansch, Chittenden Co. Public Defender, 192 College Street, 3rd Floor, Burlington, VT 05401, 802.863.6323.

4. *State v. Reynolds*, 2014 VT 16, __Vt.__, __A.3d__, 2014 WL 840813 (Vt. 2014).

State's counsel was Christopher Moll, P.O. Box 38, Hyde Park, VT 05655, 802.318.0027.

Defendant's counsel was Matthew Valerio, 6 Baldwin Street, 4th Floor, Montpelier, VT 05633, 802.828.3168.

5. *Stone v. Town of Irasburg*, 2014 VT 43 (2014)

Plaintiff- Appellant's counsel was Charles Merriman, Tarrant, Gillies, Merriman & Richardson, 44 E. State St., P.O. Box 1440, Montpelier, VT 05601, (802) 223-1112 x104.

Defendant- Appellee's counsel was Philip Woodward, Woodward & Kelley, PLLC, 1233 Shelburne Road, Ste. D-3, S. Burlington, VT 05403, (802) 652-9699.

6. *Hogaboom v. Jenkins*, No. 80779-11 CnCV (unpublished decision supplied), *aff'd* by 2014 VT 11, __Vt.__, __A.3d__, 2014 WL 840761 (Vt. 2014).

Plaintiff's counsel was Grant Rees, 30 Kimball Avenue, Ste. 306, South Burlington, VT 05403, 802.660.9000.

Defendant's counsel was Ebenezer Punderson, 99 Maple Street, Ste. 10B, Middlebury, VT 05753, 802.989.7342.

7. *Wake Robin Corp. v. Town of Shelburne*, No. S0133-11 Cnc, 2013 WL 2295855 (Vt. Super. Ct. Jan. 14, 2013) (unpublished decision previously supplied in response to 13c).

Plaintiff's counsel was Eric Miller, P.O. Box 66, Burlington, VT 05402, 802.864.9891.

Defendant's counsel was Robert Fletcher, P.O. Box 1507, Burlington, VT 05402, 802.660.2555 x214.

8. *Drumheller v. Drumheller*, No. 668-9-04 CnFc (unpublished decision previously supplied in response to 13c), *aff'd in part and rev'd and remanded in part* by 2009 VT 23, 185 Vt. 417, 972 A.2d 176 (Vt. 2009).

Plaintiff's counsel was Karen McAndrew, P.O. Box 988, Burlington, VT 05402, 802.864.5751.

Defendant's counsel was Robert O'Neill, P.O. Box 369, Burlington, VT 05402, 802.658.0220.

9. *Heco v. Johnson Controls, Inc.*, No. S0869-10 CnC
 - a. Summary Judgment Decision, 2013 WL 6978697 (March 14, 2013)
 - b. Summary Judgment Decision, 2013 WL 2155550 (May 15, 2013)
 - c. Motions in Limine, 2013 WL 6978689 (June 4, 2013)
 - d. Motion for Interlocutory Appeal, 2013 WL 6978688 (June 11, 2013)
 - e. Ruling on Seat Belt Use, 2013 WL 6978661 (June 17, 2013)
 - f. Order re: Final Judgment, 2013 WL 6978662 (July 24, 2013)
 - g. Final Judgment Order, 2013 WL 6978663, 2013 WL 6978668 (Aug. 2, 2013)
 - h. Post-Judgment Motions, 2013 WL 6978667 (Nov. 1, 2013)
 - i. Amended Final Order, 2013 WL 6978657 (Nov. 8, 2013)

Plaintiff's counsel were James Gilbert, 5400 Ward Road, Suite 200, Arvada, CO 80002, 303.431.1111, and Robert Langdon, 911 Main Street, Lexington, MO 64067, 800.397.4910.

Defendant's counsel were Richard Wray, 10 S. Wacker Drive, #4000, Chicago, IL 60606, 312.207.3891, and Thomas McCormick, P.O. Box 638, Burlington, VT 05402, 802.863.3494.

10. *Trudell v. State*, No. 612-8-10 WnCv (unpublished decision previously supplied in response to 13c), *aff'd* by 2013 VT 18, __Vt.__, 71 A.3d 1235 (Vt. 2013).

Plaintiff's counsel was Charles Merriman, P.O. Box 1440, Montpelier, VT 05601, 802.223.1112 x104.

Defendant's counsel was Keith Aten, P.O. Box 1278, Montpelier, VT 05601, 802.225.6495.

- e. Provide a list of all cases in which certiorari was requested or granted.

Levine v. Wyeth, 183 Vt. 76 (2006), *cert. granted*, 552 U.S. 1161, 128 S. Ct. 1118, *aff'd*, 555 U.S. 555, 129 S. Ct. 1187 (2009).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If

any of the opinions listed were not officially reported, provide copies of the opinions.

In Re Jones, 2013 Vt. Unpub. Lexis 221 (2013). This case was a post-conviction relief case seeking relief on the basis of ineffective assistance of counsel. The pro se complaint raised a double jeopardy issue and other claims. The state filed a motion for summary judgment on the double jeopardy issue. I understood the petitioner to state at the hearing that the only claim he was pursuing was the double jeopardy claim, and I granted final judgment to the state. The Vermont Supreme Court affirmed my ruling on the double jeopardy issue but remanded for consideration of the remaining claims.

State v. Green Mountain Future, 2013 Vt. 87 (2013). This case concerned the enforcement of campaign finance disclosure requirements established by state legislation. My decision upholding the disclosure requirements on constitutional grounds was affirmed. The case was remanded for consideration of an additional factor in assessing a civil penalty against the defendant. (Trial Court Decision: 2011 WL 8472923 (2011)).

O'Brien v. Synnott, 72 A.3d 331 (2013). This case involved a motorist who was shot by the police after he attempted to run over an officer. He was taken to the emergency room for treatment. He claimed that he was beaten in his hospital bed by a group of police officers and that his blood was drawn without permission. This case concerned his lawsuit against the hospital for alleged failure to protect him from assault and against the nurse for battery. I granted summary judgment on both counts. The Vermont Supreme Court affirmed the summary judgment against the hospital. It reversed the summary judgment in favor of the nurse on the ground that there was a factual dispute as to whether the defendant had consented to the blood draw through his silence. (Copy of trial court decision supplied).

Ying Ji v. Heide, 2013 Vt. 81 (2013). When plaintiff's counsel failed to appear for a hearing, previously rescheduled at his request, I dismissed the case. In a three-two decision, the Vermont Supreme Court reinstated the case and required prior notice of the potential sanction of dismissal for failure to appear.

Lesage v. Town of Colchester, 81 A.3d 1142 (2013). The issue in this case was whether the "amenity value" of vacation camps can be added to the value of the structure. I ruled that because the "amenity value" was captured in the cost of the underlying land, which is appraised and taxed separately, the proper measure of appraisal was the value of the structure. The Vermont Supreme Court reversed, holding that municipalities can add the amenity value to the appraisal because this value was reflected in the history of sales of the summer camps.

Allen v. Moorcroft, 2012 WL 1293691 (2012). This trial concerned a dispute over the sale of a used car. I entered judgment in favor of the purchasers on the

majority of their claims, as well as for attorneys' fees. The appeal concerned both the merits of the decision and a pre-judgment attachment. The judgment was affirmed in all respects except that it was reversed and remanded as to my denial of the seller's claim for certain insurance proceeds. (Trial court decision supplied).

Eaton v. Prior, 192 Vt. 249 (2012). This was a negligence claim filed against a lie detector operator by the subject of the exam. I ruled that the plaintiff's claims were subject to the three-year statute of limitations for personal injury. The Vermont Supreme Court reversed on the ground that some of the claims were contractual in nature and subject to the longer six-year period. (Copy of trial court decision supplied).

City of Montpelier v. Barnett, 191 Vt. 44 (2012). This case concerned control over a town reservoir. It had been the subject of two prior Vermont Supreme Court decisions holding that the city could exclude swimmers and other recreational users from the waters. I agreed with these prior decisions. The Vermont Supreme Court reversed after determining that a recent change in the regulation of state waters deprived the city of exclusive control over the reservoir. (Trial court decisions: 2010 WL 6588549 (Jan. 28, 2010); 2010 WL 6588531 (Apr. 22, 2010)).

Weiler v. Hooshiari, 189 Vt. 257 (2011). This was a tort case involving a fall of snow and ice from a roof onto the tenant's car. She filed suit against the landlord seeking damages under the implied warranty of habitability. I held a bench trial and awarded damages on that theory. The Vermont Supreme Court ruled that the implied warranty was limited to claims of personal health and safety and did not extend to property damage claims. (Trial court decisions: 2009 WL 6769852 (Dec. 18, 2009) and 2009 WL 6769853 (Dec. 8, 2009)).

Coutu v. Town of Cavendish, 189 Vt. 336 (2011). Plaintiff, a private helicopter pilot, sued the town and the state aeronautical board for injunctive relief when he was unable to obtain approval to land on his property. I dismissed both actions on the ground that plaintiff had missed the deadline for an appeal of municipal or agency action. The Vermont Supreme Court agreed that the claim against the town was time-barred. The Court reversed on the claim against the state board on the ground that no ruling – rather than an actual denial – had issued and that in the case of no ruling, injunctive relief was still potentially available. (Trial court decision: 2010 WL 3302168 (2010)).

State v. Albarelli, 189 Vt. 293 (2011). This was a disorderly conduct case brought against a man who shouted at volunteers at a voter registration table on a public street. The jury convicted. I denied a motion for acquittal filed on insufficiency of evidence grounds. The Vermont Supreme Court reversed on the ground that although the volunteers testified that they felt threatened and afraid, the conduct

viewed from an objective perspective was insufficient to cause a reasonable person to fear injury.

Bashara v. Caton, 2011 WL 4976845 (2011). This was a dispute between neighbors over a boundary. Defendant failed to appear at a merits hearing concerning injunctive relief. I ordered injunctive relief as sought by the plaintiff and asked the plaintiff's attorney to advise the court within days whether his client continued to seek money damages. When I received nothing from the plaintiff within the time-frame, I entered final judgment in his favor. He later filed a motion to reopen the case in order to present a money damage claim. I denied the request. The Vermont Supreme Court reversed on the ground that I had not advised the plaintiff's attorney that dismissal was a possible sanction if he missed the deadline.

Hawkes v. Spence and Lacaillade v. Hardaker 178 Vt. 161 (2005). This appeal concerned two cases in which parents filed post-judgment motions to modify their parental rights and responsibilities ("PRR") due to a proposed move by the custodial parent. The cases were consolidated for purposes of appeal. The case in which I had ruled was *Lacaillade v. Hardaker*. Vermont precedent at the time of my decision had allowed the custodial parent to move, even out of state, without reconsideration of the PRR decision. This important ruling changed the rule and permitted the non-custodial parent to seek a modification of PRR upon a demonstration that the move would have a substantial impact on his or her relationship with the child. (Trial court decision supplied).

State v. Memoli, 189 Vt. 237 (2011). The Vermont Supreme Court reversed my ruling in the course of trial that questioning the victim about her prior sexual conduct was barred by the rape shield statute. The case was remanded for a new trial at which the defense could introduce testimony about the victim's alleged practice of exchanging sex for drugs. (Trial court decision supplied).

Drumheller v. Drumheller, 2009 VT 23, 185 Vt. 417, 972 A.2d 176 (Vt. 2009). This divorce decision was affirmed in all respects but one. It was reversed and remanded for further consideration of whether savings accounts established for the parties' children were marital property. (Trial court decision supplied).

Northern Security Ins. Co. v. Mitec Electronics, 184 Vt. 303 (2008). This case concerned claims for insurance coverage for environmental pollution. It has a very long history that predated my involvement. In 1999 the insurer filed a declaratory action seeking a judgment that it had no obligation to cover the losses. In 2004 the trial court ruled in favor of the insurer on the merits. The insurer then sought to amend the complaint to recover its legal fees. A different trial judge granted the motion to amend in 2005. I entered the case subsequently and entered a judgment for the legal fees. This judgment was reversed on the ground that the court lacked authority to permit the amendment of the complaint after it issued its original ruling in 2004. (Trial court decision supplied).

Forney v. Terjelian, 2007 WL 5313524 (2007). In this parentage case, the father-plaintiff sought to prove that the mother of his child and her new boyfriend were engaged in sexual abuse of the parties' three-year-old daughter. I heard from both sides and issued a ruling in favor of the mother. The father appealed, and the Vermont Supreme Court remanded for additional hearing time.

Solemno v. Phillips, 2007 WL 5313382 (2007). The plaintiff was the ex-son-in-law of the defendant. He sought a restraining order after an incident in which he believed that the defendant had threatened to hit him with his automobile. I issued a relief from abuse order. The court reversed on the ground that my findings on the record were insufficient to demonstrate that the plaintiff's fear was reasonable and grounded in a history of prior threatening conduct.

Brumstead v. Murtha, 2007 WL 5314743 (2007). This post-judgment divorce dispute concerned the interpretation of a provision in the stipulated divorce decree that required the father to pay various expenses after age 18. I construed the reference to college expenses (not in dispute) and the reference to medical and other expenses in pari materia and of equal duration. The Vermont Supreme Court found the decree to be ambiguous and remanded it for further fact-finding. (Trial court decision supplied).

Gregoire v. Gregoire, 2006 WL 5924243 (2006). This was a dispute over ownership of a family business. As the parents neared retirement, they placed the property in their son's name with the understanding that he would operate the business for their benefit as well as his own. After he married, he ceased making payments to his parents. They sued him on a theory of constructive trust. I conducted a bench trial and ruled that the son was liable on a theory of resulting trust. The son appealed on the ground that he and his attorneys were unprepared at trial to respond to a claim of resulting trust. The case was remanded for a second trial. (Trial Court Decision: 2006 WL 7090950 (Feb. 2, 2006)).

LeBarron v. Spence, 2006 WL 5847249 (2006). This was a post-judgment motion to modify parental rights and responsibilities ("PRR") and parent-child contact ("PCC"). The hearing followed a prior appeal on the issue of PRR only. The defendant (non-custodial parent) dropped his motion to modify PRR shortly before the hearing and continued to seek a modification of PCC only. The custodial parent moved to dismiss the post-judgment case on the ground that the only live issue was PRR. I disagreed and held the hearing on PCC. On appeal, the Vermont Supreme Court ruled that principles of collateral estoppel barred the relitigation of the PCC issue. (Trial court decision supplied).

O'Brien Bros. v. Plocienik, 182 Vt. 409 (2005). I found that the course of the parties' conduct, including providing personal financial information at the time the second lease was signed, was sufficient evidence of the parties' intent to provide a personal guaranty. The Vermont Supreme Court reversed on the

ground that a guaranty cannot be implied and that in the absence of a signed document, the president had no personal liability for the lease payments. (Trial court decision supplied).

Hopkinton Scout Leaders Assoc. v. Town of Guilford, 176 Vt. 577 (2004). This was a case involving failure of taxpayer to comply with specific statutory requirements for tax exemption of Boy Scout property, which resulted in denial of exemption. Several Massachusetts boy scout troops formed an umbrella corporation to hold title to their scout camp in southern Vermont. By statute, property belonging to a scouting organization is tax-exempt so long as the organization is chartered. The member troops were all chartered; their umbrella corporation was not. I ruled that they were entitled to the exemption since any one of them could have held sole title and have been exempt. The Vermont Supreme Court applied the tax exemption provision more strictly and denied the exemption since the title owner did not meet the statutory criteria.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Decisions of the full Vermont Supreme Court (five justices) are published in Vermont Reports, Atlantic Reports, and on Westlaw. The three-justice summary decisions are unpublished but are available on Westlaw. Although all Vermont trial court decisions are unpublished, certain opinions can be located at the informal database at <https://www.vermontjudiciary.org/MasterPages/todecisioncvl.aspx>. Any decisions that I issued as an acting small claims judge for the Chittenden Superior Court are located in individual case files at the Vermont public records repository in Middlesex, Vermont. The six recommendations that I made as a temporary hearing officer for the Vermont Department of Labor and Industry are stored in case files at the renamed Department of Labor in Montpelier, Vermont.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Cameron v. Rollo, 2014 VT 40 (2014)

Hament v. Baker, 2014 VT 39 (2014)

Stone v. Town of Irasburg, 2014 VT 43 (2014)

State of Vermont v. Green Mountain Future, No. 758-10-10 Wncv, 2011 WL 8472923 (Vt. Super. Ct. 2011), *aff'd in part and rev'd in part*, 2013 VT 87, 2013 WL 5387153 (2013)

Wood v. Pallito, Nos. 947-12-09 Wncv et al., 2010 WL 4567692 (Nov. 3, 2010)

State v. Williams, No. 3624-8-06 CnCr (unpublished decision previously supplied in response to 13c), *aff'd*, 188 Vt. 413 (2010)

Trudell v. State, 2013 VT 18 (2013)

Hogaboom v. Jenkins, No. S0779-11 CnCv (unpublished decision previously supplied in response to 13d), *aff'd*, 2014 WL 840761, 2014 VT 11 (2014)

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeal.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Our Vermont recusal system operates as follows: a judge may grant a recusal motion but he or she may not deny it. Instead, if there is a dispute over recusal, the judge refers the matter to the Administrative Judge.

Over the years I have granted recusal motions in a small number of cases involving parties or lawyers I know personally. More frequently, I disqualify myself in advance when I first review the file. My practice is to disqualify myself in all cases involving my two former law partners and to disclose the potential conflict in the case of a small number of lawyers who are personal friends. If a party objects to my participation after the disclosure, I always grant the recusal motion. These conflicts are relatively rare. Occasionally a party, often pro se, will file a recusal motion on grounds such as prior rulings in related cases which do not justify disqualification. If I do not grant the motion, I refer it to the Administrative Judge. I do not recall an instance when she granted a recusal motion after referral. I do not maintain a record of the cases in which I have disqualified myself.

Since becoming an appellate judge in October 2013, the cases on which I am disqualified has grown to include cases I heard or participated in as a trial court judge. The great majority are identified by staff who mark me as disqualified without any action on my part. Occasionally I disqualify myself if my prior involvement escaped the notice of our staff. I do not maintain a record of the cases in which I have disqualified myself.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

In addition to judicial office, I served as a board member on the Fletcher Free Library Board from 1993 to 2002, after I was appointed by the Burlington City Council. I served as chair from approximately 1996 to 2002.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held an office in any political party, nor have I held a position or played a role in a political campaign.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to Judge Albert W. Coffrin, United States District Court Judge for the District of Vermont, from 1980 to 1981.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1981 – 1984
Burlingham, Underwood & Lord
(firm dissolved)
New York, NY
Junior Associate

1984 – 1987
Manchester & O'Neill
95 Saint Paul Street
Burlington, VT 05401
Associate

1987 – 2002
O'Neill, Crawford & Green
159 Bank Street
Burlington VT 05401
Partner

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

After clerking for the Honorable Albert W. Coffrin, I then worked for three years at Burlingham Underwood & Lord, a maritime law firm in New York City, from 1981 to 1984. As a junior associate, I spent two years with the litigation department and one year with the ship finance department. I worked on charter party disputes concerning the lease and hire of merchant ships and collision cases involving property damage to ships, shoreline facilities, and barges. I also worked on ship mortgage and registration transactions.

In 1984, I returned to Burlington, Vermont, to join Jerome O'Neill, a former law clerk for the same judge I had clerked for and his partner, Robert Manchester. My primary responsibility at Manchester & O'Neill was writing briefs for both partners, both at the trial and appellate levels, although I participated in some trials. My cases included negligence claims, wrongful death actions, and workers compensation appeals.

In 1987, Mr. O'Neill and I formed O'Neill, Crawford & Green. We specialized in personal injury litigation on the plaintiff's side, as well as in commercial litigation. My practice focused on civil lawsuits and workers compensation claims. I tried cases to verdict in most years. In the 1980s, I also took on appointed federal criminal defense assignments through the CJA program. I represented about six to eight felony defendants in total. By 1990, I turned entirely to civil litigation and the work of building and running the law firm.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

The clients of Burlingham Underwood & Lord were primarily ship owners and banks which lent to ship owners.

While at Manchester & O'Neill, I represented plaintiffs involved in personal injury cases.

At O'Neill Crawford & Green, I represented plaintiffs involved in personal injury cases. Between 1987 to approximately 1990, I also represented criminal defendants in federal court through the CJA assigned counsel program. I also represented commercial clients in two constitutional challenges to state legislation and in one significant bankruptcy case.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As a young lawyer in New York City, I appeared in court about once per month. When I returned to Vermont in 1984, I appeared in court frequently. My work from 1984 to 2002 was entirely taken up with litigation. I was in court in Vermont on a weekly basis for trials, motions hearings, and status conferences. During this time I also handled workers compensation appeals before the Vermont Department of Labor and Industry.

- i. Indicate the percentage of your practice in:

1. federal courts:	10%
2. state courts of record:	75%
3. other courts:	0%
4. administrative agencies:	15%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	95%
2. criminal proceedings:	5%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Over the course of 15 years of practice with my former firm, I tried up to four cases per year. In some years no cases went to trial. Although I do not have an exact count, I tried approximately a dozen cases to verdict. Between 1987 and 1990, I tried two to three cases as a junior lawyer with the help of my senior partner Jerome O'Neill. Starting in 1990, I either appeared as sole counsel or co-counsel. The greatest number of verdicts in one year was four, but one or two was more common. In a few years no cases went to trial.

- i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 0% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

The information requested dates back over twenty-four years, and I no longer have access to the records relating to my private practice. Upon becoming a judge, I left my records with my former law firm. Paper records have been discarded, and the computerized records which the firm now maintains do not exist for my time in private practice. As a result, I was only able to find records for eight cases.

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *National Electrical Mfrs. Ass'n v. Sorrell*, No. 1:99CV203, 72 F.Supp. 2d 449 (D.Vt. 1999), *rev'd*, 272 F.3d 104 (2d Cir. 2001).

This was a constitutional challenge to mandatory labeling. In this case, the product was the fluorescent light bulb. The label in dispute concerned a recycling notice which would appear on every fluorescent tube sold in Vermont. Our client's Commerce Clause objection to the notice was that it was burdensome to provide a special label for fluorescent bulbs for sale in a single state. I served as local counsel for the National Electrical Manufacturers Association. We won at a bench trial at the District Court level but lost on appeal.

Lead counsel for plaintiffs was Steven Rosenbaum, Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington, D.C. 20004, 202.662.5568.

Opposing counsel for the State was Assistant Attorney General Ronald Shems, Vermont Natural Resources Board, Dewey Building, National Life Drive, Montpelier, VT 05602, 802.828.3309

2. *Guil v. Allstate Insurance Co.*, 170 Vt. 464 (2000).

I represented the plaintiff-appellee. This was a declaratory action against the plaintiff's auto insurer. I had previously represented Ms. Guil at trial against several motorists responsible for her injuries. Allstate, as Ms. Guil's insurer, had paid medical bills through her "medical payments" coverage. The purpose of the declaratory action was to obtain recognition from the courts that Allstate as a subrogated insurer was required to reduce its claim for repayment to reflect a pro rata share of the costs of recovery (legal fees and expenses). At the trial court level and on appeal, the Vermont Courts agreed that the "common fund doctrine" required the insurer to share in the costs of recovery, thereby reducing the cost of repayment to Ms. Guil. The Vermont Supreme Court decision established the common fund doctrine in our state. My representation lasted for about two years between 1998 and 2000.

The defendant was represented by Charles Platto (retired).

3. *Mumley v. Lenco Industries, Inc.*, No. 97-9575 (D.Vt.), 173 F.3d 845 (2d Cir. 1999).

This was a product liability case involving the death of an armored car guard in a single vehicle accident. It presented significant issues of crashworthiness and defect in the automotive setting. I tried it with co-counsel Bradley Stetler in 1997 before Judge J. Garvan Murtha in United States District Court for the District of Vermont. My adversary was now Chief Justice Paul Reiber of the Vermont Supreme Court. The result was a defendant's verdict – a defeat for our side – which was affirmed on appeal.

I served as co-counsel with Bradley Stetler, 95 Saint Paul Street, Burlington, VT 05401, 802.660.8646.

Defendant's counsel was now Chief Justice Paul Reiber, Vermont Supreme Court, 109 State Street, Montpelier, VT 05609, 802.828.3278 and Shannon Bertrand, P.O. Box 578, Rutland, VT 05702, 802.665.2680.

4. *International Dairy Foods Ass'n v. Amestoy*, No. 2:94CV119, 898 F.Supp. 246, vacated and remanded, 92 F.3d 67 (2d Cir. 1996).

This was a constitutional challenge under the Commerce Clause to the mandatory labeling of dairy products from herds treated with the medication bST. Our client's position was that mandatory labeling violated its members' right to commercial free speech. Our client's position was that the addition of the bST warning suggested there might be something wrong with the product despite FDA approval of its use. I was local counsel at the trial court level for the International Dairy Foods Association. We lost at a bench trial at the District Court level. The case was reversed in favor of our clients by the Second Circuit.

Lead counsel for plaintiffs was Steven Rosenbaum, Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington, D.C. 20004, 202.662.5568.

The State was represented by Assistant Attorney General Julie Brill, now a Commissioner on the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, 202.326.2021.

5. *Robitaille v. Rubin*, 159 Vt. 152 (1992).

I represented a small home builder in a dispute over a purchase and sale agreement. My representation included a trial before the Vermont Superior Court and an appeal to the Vermont Supreme Court. The buyer sought to cancel the purchase and sale agreement because he had not been shown a copy of the state land use permit approving the subdivision before he signed the agreement. Although the land use law requires disclosure of permits in advance, this was a non-material breach because there had never been any controversy about the permit which had issued years before. The Vermont Supreme Court upheld my client's claim that in the absence of unfairness or harm to the buyer, a break of the permit requirement does not provide a basis for rescission of the contract.

Opposing counsel was Vincent Illuzzi, P.O. Box 226, Orleans, VT 05860, 802.754.2200.

6. *In re Summit Ventures*, Bankruptcy Nos. 90-00213-90-00221, 135 B.R. 478 (Bankr. D.Vt. 1991).

This bankruptcy case concerned the Mt. Ascutney ski resort. I was local counsel for the principal secured lender Lloyds Bank. As the case developed, my principal role and that of my law partner Jerome O'Neill was to defend against lender liability

claims filed in the bankruptcy court by the debtor. These claims were ultimately dismissed with prejudice and the bankruptcy proceeded through the liquidation process.

Local counsel debtor Summit Ventures was Douglas Wolinsky, P.O. Box 1489, Burlington, VT 05402, 802.864.0880. Co-party counsel was Sheldon Prentice, NBT Bank, 52 South Broad Street, Norwich, NY 13815, 607.337.6530

The interim trustee was John Canney, P.O. Box 6626, Rutland, VT 05702, 802.773.3325.

Lead counsel for Lloyds Bank was Jeffrey Schwartz, Hahn & Hessen, 488 Madison Avenue, New York, NY 10022, 212.478.7330.

Lead counsel for the debtor was Peter Fine (deceased) and Steven Manchel, 199 Wells Avenue, Newton, MA, 617.796.8920.

7. *Estate of Sawyer v. Crowell*, 151 Vt. 287 (1989).

We represented an estate that had lost money through a bad investment in a real estate investment trust. The executor had specifically instructed the investment manager not to place the money in a real estate investment trust ("REIT"). The trial court entered judgment for the estate. On appeal, the issues were whether there was sufficient evidence to support the judgment, whether the executor had independent knowledge of the REIT investment sufficient to establish ratification, and whether the damages were correctly assessed. We prevailed on all issues. Although the Vermont Supreme Court originally entered an opinion adverse to our client's interest, the Vermont Supreme Court ruled in favor of the estate upon our motion for reconsideration. My role was to write the briefs on appeal in the period 1988 to 1989.

Opposing counsel was David Putter, 15 E. State Street, Montpelier, VT 05602, 802.229.0932 and Norman Watts, P.O. Box 270, Woodstock, VT 05091, 802.457.1020.

8. *Cavanaugh v. Abbott Laboratories*, 145 Vt. 516 (1985).

Immediately after joining O'Neill and Manchester in 1984, I wrote the briefs in this case on behalf of the plaintiff-appellee. This was a claim against the manufacturers of the anti-miscarriage drug DES, which was widely distributed in the 1950s and 1960s and was found to cause certain types of cancer in women whose mothers had received the drug. The case presented a statute of limitations problem because the drug was administered prior to the birth of the plaintiff. It also presented issues of market share liability because the drug was manufactured by many companies and the identity of the manufacturer of the particular product used by the plaintiff's mother was no longer known. My work on the case concerned only the briefing before the Vermont Supreme Court and encompassed the six months from May 1984 – October 1984. In

Cavanaugh, the Vermont Supreme Court adopted the discovery rule in statute of limitations cases. It overturned the case of *Murray v. Allen*, 103 Vt. 373 (1931), which held that a cause of action accrued at the time of the defendant's last negligent act.

Opposing counsel were John Sartore, Paul Frank & Collins, P.O. Box 1307, Burlington, VT 05402, 802.658.2311, and William Quinn (retired).

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a judge in the Criminal Division, I have become engaged in the treatment courts. In Chittenden County where I presided for three years from 2005 to 2008, I was the judge assigned to the drug court and the mental health court. With the support of the prosecutor and the local community mental health system, we were able to expand the mental health court significantly. This court serves defendants suffering from serious mental illness, most of whom were charged with misdemeanors, often multiple. Violent people were not admitted. Although the program took some court time – about two and a half hours per week – it paid off in a substantial decrease in recidivism at least while people were in the program. The court attracted a good deal of public attention and support. In drug court, I entered a more established program with strong support again from the prosecution and the substance abuse treatment community. I met weekly with the participants. The hearings were public, and the rest of the drug court participants listened intently as each person discussed their progress over the course of the week with me. I provided encouragement but also issued sanctions when necessary, including weekends in jail. As with the mental health court, the response was remarkably positive and the community support was strong.

I have never been a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

None.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no such plans, commitment or agreements if confirmed.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

At this time I do not anticipate any conflicts-of-interest from family members, other persons or financial agreements if confirmed.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would carefully follow 28 U.S.C. 455 and Canon 3 of the Code of Conduct for United States Judges. I would also engage in prompt and immediate review of the parties, their affiliates, and the issues in any litigated matter to come before me so that I could make a prompt, informed decision regarding the propriety of my participation in the matter.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in

serving the disadvantaged.” Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Since returning to Vermont in 1984, I have volunteered in various ways in community groups. In 1993 I joined the board of the Burlington public library where I was very active for almost a decade. We met monthly and in committees during the month. During the 1990s, I also served on a volunteer basis as a hearing officer for the Department of Labor and Industry. I heard workers compensation appeals and issued written rulings from approximately 1990 to 1994. I estimate that I heard and decided six to ten cases during a period when the Department was without a full-time hearing officer. I also volunteered from about 1990 to 2000 as a small claims judge in the Chittenden Superior Court. I served about once a month for a day or half-day.

In 2008, I served on the Burlington Committee on Open Government. In addition, as a lawyer in a small firm, I frequently provided help and advice without charge to clients, and family members of clients. Part of the job of representing an individual in an injury case is becoming their “family lawyer” for many purposes.

Since becoming a judge, I have become involved in two boards. One is the local (Burlington area) Dismas House board. Dismas is a halfway house for prisoners. We operate a home in Burlington and Winooski, Vermont. There are two other local boards in Hartland and Rutland, Vermont. I served as president of the board for a year between 2012 and 2013, but I found that certain aspects of the position were too public. Because I cannot engage in fundraising and cannot negotiate with partners such as the Department of Corrections, I have taken a back-seat role and help at meetings of the board. Dismas has a long history of support from Vermont judges, and I am very proud of my involvement.

In 2010 I also joined the board of the New England Organ Bank (“NEOB”). The NEOB is responsible for the procurement of organs for transplant throughout much of New England. I became involved after we lost a child in an accident in 2007. I now serve as vice chair of the NEOB. Much of the work is technical and medical in nature. I try to bring the knowledge and perspective of a donor parent to our meetings.

I have also taken a role in educating the community both before and after becoming a judge by serving as a Law Day speaker in the Burlington public schools from 2000 to 2002 and again from 2006 to 2009 when I was located in Burlington.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or

communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In February 2014, I submitted an application to the Vermont Judicial Selection Commission convened by Senators Leahy and Sanders. On March 14, 2014, I interviewed with the Commission in Burlington, Vermont. On March 19, 2014, I interviewed with Senator Leahy in Burlington, Vermont. He later notified me by telephone that he intended to recommend me for the vacancy. Since March 24, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 8, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 19, 2014, the President announced his intent to nominate me to serve on the U.S. District Court for the District of Vermont.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 106
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Crawford, Geoffrey W.	2. Court or Organization U.S. District Court for the District of Vermont	3. Date of Report 05/19/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 05/19/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 04/30/2014
7. Chambers or Office Address Vermont Supreme Court 111 State St Montpelier, Vermont 05601		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Board Member	Dismas of Vermont (Burlington board)
2. Board Member, Vice Chair	New England Organ Bank
3.	
4.	
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. 2002	VT SERS pension plan
2.	
3.	

FINANCIAL DISCLOSURE REPORT
 Page 2 of 6

Name of Person Reporting	Date of Report
Crawford, Geoffrey W.	05/19/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2012	salary; Vermont Judiciary	\$121,903.00
2. 2013	salary; Vermont Judiciary	\$129,438.00
3. 2014	salary; Vermont Judiciary	\$47,714.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)
☒ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)
☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
 Page 3 of 6

Name of Person Reporting	Date of Report
Crawford, Geoffrey W.	05/19/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

Page 4 of 6

Name of Person Reporting	Date of Report
Crawford, Geoffrey W.	05/19/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Vanguard European Stock Index Fund	A	Dividend	K	T	Exempt				
2. Vanguard Growth and Income Fund	D	Dividend	N	T					
3. Vanguard International Growth Fund	C	Dividend	M	T					
4. Vanguard REIT Index Fund	B	Dividend	L	T					
5. Vanguard Total Stock Market Index Fund	D	Dividend	N	T					
6. Vanguard 500 Index Fund	C	Dividend	M	T					
7. People's United Bank, cash account		None	J	T					
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less P = \$50,001 - \$100,000	B = \$1,001 - \$2,500 C = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 5 of 6

Name of Person Reporting	Date of Report
Crawford, Geoffrey W.	05/19/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

Page 6 of 6

Name of Person Reporting	Date of Report
Crawford, Geoffrey W.	05/19/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/* Geoffrey W. Crawford

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		3	676	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	272	739	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		39	579
Real estate owned – see schedule		800	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		55	000				
Cash value-life insurance							
Other assets itemize:							
Vermont SERS		90	456				
				Total liabilities		39	579
				Net Worth	2	182	292
Total Assets	2	221	871	Total liabilities and net worth	2	221	871
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

Vanguard 500 Index Fund	\$ 121,195
Vanguard European Stock Index Fund	26,148
Vanguard Growth and Income Fund	365,557
Vanguard International Growth Fund	209,597
Vanguard REIT Index Fund	61,516
Vanguard Total Stock Market Index Fund	<u>488,726</u>
Total Listed Securities	\$ 1,272,739

Real Estate Owned

Personal residence	\$ 650,000
Family vacation property (50% interest)	<u>150,000</u>
Total Real Estate Owned	\$ 800,000

AFFIDAVIT

I, Geoffrey W. Crawford, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

May 19, 2014 Geoffrey W. Crawford
(DATE) (NAME)

Catherine Gattone
(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Nancy Beth Firestone

2. **Position:** State the position for which you have been nominated.

Judge, United States Court of Federal Claims (Re-Appointment)

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Court of Federal Claims
Howard T. Markey
National Courts Building
717 Madison Place, N.W.
Washington, DC 20439

4. **Birthplace:** State year and place of birth.

1951; Manchester, New Hampshire

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1974 – 1977, University of Missouri (Kansas City); J.D. (with Distinction), 1977

1969 – 1973, Washington University (St. Louis, Missouri); B.A., 1973

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1998 – Present
United States Court of Federal Claims
717 Madison Place, N.W.

Washington, DC 20439
Judge

1985 – Present
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001
Adjunct Professor of Law

1995 – 1998
United States Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Deputy Assistant Attorney General

1992 – 1995
United States Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Judge

1989 – 1992
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Associate Deputy Administrator

1985 – 1989
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Deputy Chief

1984 – 1985
United States Department of Justice
Environment and Natural Resources Division
Policy Legislation and Special Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Assistant Chief

1977 – 1984

United States Department of Justice
Environment and Natural Resources Division
Appellate Section and Environmental Enforcement Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Staff Attorney

1975 – 1977

United States Attorney's Office for the District of Kansas
500 State Avenue
Kansas City, KS 66101
Law Clerk

1973 – 1974

B. Dalton Bookseller
St. Louis, MO
No Longer In Business
Sales Clerk

Other affiliations (uncompensated):

1993 – 1998

Lake Barcroft Homeowner's Association
P.O. Box 1085W
Falls Church, VA 22041
Vice-President, Board of Directors

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have no military service. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Randolph Thrower Award, Court of Federal Claims Bar (2010)

Vicennial Medal, Georgetown University Law Center (2010)

Panelist for Regional Finals, White House Fellows (2001 – 2009, 1993 – 1996)

Loren A. Smith Award for Service to the Court (2004)

Georgetown University Law Center Charles Fahy Distinguished Adjunct Professor Award (1998)

Presidential Distinguished Executive Award (1997)

Attorney General Delegate to National Trust for Historic Preservation (1995)

Presidential Meritorious Executive Award (1993)

Attorney General Award for Distinguished Service (1988)

U.S. Department of Justice Special Commendation for Outstanding Service Awards (1981 – 1988)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
Court of Federal Claims Bar Association
Judicial Conference Liaison (2002 – Present)
Federal Bar Association
Federal Circuit Bar Association
State of Missouri Bar Association

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Missouri, 1977

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Fourth Circuit, 1979
United States Court of Appeals for the Fifth Circuit, 1982
United States Court of Appeals for the Eighth Circuit, 1979
United States Court of Appeals for the Ninth Circuit, 1977
United States Court of Appeals for the Tenth Circuit, 1978
United States Court of Appeals for the District of Columbia Circuit, 1978

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Lake Barcroft Homeowner's Association (1987 – Present)
 Architectural Review Committee (2001 – 2005, 2012 – Present)
 Board Member
 Community Garden LBA-WID Task Force (2012)
 LBWID Dam Safety Regulations Committee (2007 – 2008)
 Vice-President, Board of Directors (1993 – 1998)

Resource Conservation and Recovery Act Implementation Task Force Executive Committee (1990)

Policy Steering Committee Task Group for the Superfund Program (1991)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Bid Protest Overview Part II, WEST GOVERNMENT CONTRACTS YEAR IN REVIEW CONFERENCE, FEBRUARY 2013 CONFERENCE (2013). Copy supplied.

Another View: The Environmental Context, THE ENVTL. FORUM, Mar.-Apr. 2010, at 39. Copy supplied.

With Elizabeth C. Brown, Ensuring The Fairness of Agency Adjudications: The Environmental Appeals Board's First Four Year, 2 ENVTL. LAW. 291 (1996).

The Environmental Protection Agency's Environmental Law Appeals Board, 1 ENVTL. LAW. 1 (1994). Copy supplied.

ENVIRONMENTAL LAW PRACTICE GUIDE §11A (Matthew Bender & Co. 1994) (out of print). I have been unable to obtain a copy.

With Philip F. W. Ahrens, III, Michael K. Slattery & Karen Florini, Regulating Solid and Hazardous Wastes: Has Federal Regulation Lived Up to Its Mandate or Can the States Do a Better Job?, 22 ENV. L. REP. 10,038 (1992). Copy supplied.

Government Perspectives on Bankruptcy and Environmental Law Interaction, 18 ENV. L. REP. 10,358 (1988). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

As a member of the Environmental Protection Agency (EPA) Policy Steering Committee, I reviewed a report about the management of the Superfund program before its publication. U.S. ENV'L PROT. AGENCY, A MANAGEMENT REVIEW OF THE SUPERFUND PROGRAM (1991), available at <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=2000SHV2.txt>.

As a member of the Executive Committee of the EPA Resource Conservation and Recovery Act Implementation Study Task Force, I reviewed the study before its publication. U.S. ENV'L PROT. AGENCY, THE NATION'S HAZARDOUS WASTE MANAGEMENT PROGRAM AT A CROSSROADS: THE RCRA IMPLEMENTATION STUDY (1990), available at <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=10003RCO.txt>.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On October 6, 1998, I appeared before the U.S. Senate Judiciary Committee for my hearing when I was first nominated to the United States Court of Federal Claims. Confirmation Hearings on Federal Appointments Before the S. Comm. On the Judiciary, 105th Cong (1998). Transcript supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Since becoming a judge, I have lectured on a variety of law topics at various bar association sponsored events, including the court's annual judicial conference. I do not have any formal written speeches or published lectures. For the most part, my participation in these events has involved review of recent decisions. I have identified, on the list below, the conferences or occasions for which I have found a draft of my remarks or had prepared remarks.

March 20, 2014: I participated in a judge's panel at the American Bar Association's Annual Federal Procurement Institute in Annapolis, MD. Case summaries supplied.

February 24, 2014: I participated as a moderator on a panel at the Court of Federal Claims Judicial Conference in Washington, DC. The panel reviewed key Supreme Court decisions in the October 2013 Term. I have no notes, transcript or recordings. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

June 18, 2013: I participated in an American Bar Association "Ask the Judges" Brown Bag on bid protest cases at the Court of Federal Claims in Washington, DC. I have no notes, transcript or recordings. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, DC 20036.

April 11, 2013: I participated as a judge in the George Washington Law School Government Contracts Moot Court at the Court of Federal Claims in Washington, DC. I have no notes, transcript or recordings. The address of George Washington Law School is 2000 H Street, N.W., Washington, DC 20052.

April 4, 2013: I provided brief remarks at a Portrait Presentation for Chief Judge Emily C. Hewitt at the Court of Federal Claims. Remarks supplied.

February 21, 2013: I participated in a Bid Protest Panel at West's Government Contract Year in Review in Washington, DC. Case summaries supplied.

October 31, 2012: I participated on a panel entitled, "The Role of the Judiciary in Improving Governance and Law for Environmental Sustainability," before visiting judges from Brazil at the Organization of American States in Washington, DC. I have no notes, transcript, or recording. The address of the Organization of American States is 200 17th Street, N.W., Washington, DC 20006.

September, 27, 2012: I participated in the Environmental Law Institute Training Program in Judicial Specialization for the Protection of Environmental Right and spoke with judges from the Mexico Supreme Court at the Court of Federal Claims in Washington, DC. I spoke on general principles of administrative law and the role of courts in reviewing agency decisions. I have no notes, transcript or recording. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

May 17, 2012: I participated on a panel at the Federal Circuit Judicial Conference Breakout Session on the Court of Federal Claims in Washington, DC. I spoke on recent contract cases before the Court of Federal Claims. I have no notes, transcript or recordings. The address of the Court of Appeals for the Federal Circuit is 717 Madison Place, N.W., Washington, DC 20439.

March 23, 2012: I participated on a judge's panel entitled, "Judges Panel – Effective and Efficient Case Preparation and Presentation," at the American Bar Association's Annual Federal Procurement Institute in Annapolis, MD. I reviewed various pre-trial and post-trial orders that I use to streamline the trial and focus the parties on the issues to be decided. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Ave. N.W., Suite 400, Washington, D.C. 20036.

February 25, 2012: I participated as a judge in the National Environmental Law Moot Court at Pace Law School in White Plains, New York. I have no notes, transcript or recordings. The address of Pace Law School is 78 North Broadway, White Plains, New York 10603.

October 18, 2011: I participated as a moderator on a panel on "Rails to Trails" cases at the Court of Federal Claim Judicial Conference in Berkeley, California. I spoke on the issue of certifying questions of state property law to state supreme courts. I have no notes, transcript or recordings. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

June 21, 2011: I participated in an American Bar Association "Ask the Judges" Brown Bag on bid protest cases at the Court of Federal Claims in Washington, DC. I have no notes, transcript or recordings. The address of the American Bar

Association is 1050 Connecticut Ave. N.W., Suite 400, Washington, D.C. 20036.

February 26, 2011: I participated as a judge in the National Environmental Law Moot Court at Pace Law School in White Plains, New York. I have no notes, transcript or recordings. The address of Pace Law School is 78 North Broadway, White Plains, New York 10603.

October 27, 2010: I participated as a moderator for a panel entitled, "Record Review in the Court of Federal Claims," at the Court of Federal Claims Judicial Conference in Washington, DC. I introduced each panelist. I have no notes, transcript or recordings. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439

June 29, 2010: I participated in a Court of Federal Claims Brown Bag Lunch entitled, "Using your Clerkship as a Springboard to a Law Career," in Washington, DC. I spoke in general terms about careers at the Department of Justice and other federal agencies following a clerkship. I have no notes, transcript or recordings. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

June 21-25, 2010: I participated in a training for judges in Guatemala, in Guatemala City, Guatemala. I spoke on the importance of expert witness testimony in environmental cases. The program was organized by the Environmental Protection Agency. I have no notes, transcript, or recording. The address of the Environmental Protection Agency is 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

May 5, 2010: I participated in a meeting with visiting judges from Egypt at the Court of Federal Claims in Washington, DC. I discussed general administrative law principles used by judges in the United States. I have no notes, transcript or recording. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

April 6, 2010: I gave a tour to visiting students from the Citadel at the Court of Federal Claims in Washington, DC. Talking points supplied.

December 16, 2009: I participated in a Court of Federal Claims Bar Association Brown Bag Lunch in Washington, DC. At this event, I spoke on recent bid protest cases before the court. I have no notes, transcript or recordings. The address of the Court of Federal Claims Bar Association is P.O. Box 7614, Ben Franklin Station, Washington, DC 20044.

October 29, 2009: I gave an introduction to a panel on tax issues potentially affecting tax cases at the Court of Federal Claims at the Court of Federal Claims Judicial Conference, which was held in conjunction with the Tulane Tax Institute in New Orleans, Louisiana. I have no notes, transcript or recordings. The address

of Tulane Law School is 6329 Freret Street, New Orleans, LA 70118.

July 12, 2007: I participated in a Court of Federal Claims Bar Association Brown Bag Lunch entitled, "Practice at the Court of Federal Claims," in Washington, DC. I discussed various techniques for presenting evidence to a court. I have no notes, transcript or recordings. The address of the Court of Federal Claims Bar Association is P.O. Box 7614, Ben Franklin Station, Washington, DC 20044.

April 20, 2007: I served as a judge in the 34th Annual Giles Rich Moot Court Competition at the Federal Circuit in Washington, DC. I have no notes, transcript or recordings. The address of the American Intellectual Property Law Association is 241 18th Street South, Suite 700, Arlington, VA 22202.

April 22, 2004: I participated in a Brown Bag Lunch with Federal Circuit judges to discuss the Court of Federal Claims' approaches to alternative dispute resolution in Washington, DC. I have no notes, transcript or recordings. The address of the Court of Appeals for the Federal Circuit is 717 Madison Place, N.W., Washington, DC 20439.

October 14, 2003: I participated in a panel discussion on ethics at the Court of Federal Claims Judicial Conference in Washington, DC. Remarks supplied.

February, 14, 2003: I participated in an American Bar Association Panel discussion on alternative dispute resolution in government contracting at the Court of Federal Claims in Washington, DC. I have no notes, transcript or recordings. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, DC 20036.

October 2002: I moderated a panel discussion entitled, "The Future," at the Court of Federal Claims Judicial Conference in Washington, DC. I introduced the panel speakers, who then discussed suggestions for improving gaps in the court's jurisdiction. I have no notes, transcript, or recording. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

March 1, 2002: I participated on a panel entitled, "Judicial Perspective," at the American Bar Association's Annual Federal Procurement Institute in Annapolis, MD. I was responsible for providing an update on the court's ADR program. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, DC 20036.

November 13, 2001: I participated in a Fairfax County Chamber of Commerce lunch panel discussion on alternative dispute resolution in government contract disputes in McLean, Virginia. I have no notes, transcript or recordings. The address of the Fairfax County Chamber of Commerce is 8230 Old Courthouse Road, Suite 350, Vienna, VA 22182-3853.

June 29, 2001: I participated in a question-and-answer session at the Embassy of Thailand to visiting Administrative Judges from Thailand regarding my former role as a judge on the Environmental Protection Agency's Environmental Appeals Board. I have no notes, transcript or recordings. The address of the Embassy of Thailand is 1024 Wisconsin Avenue, N.W., Washington, DC 20007.

June 15, 2000: I participated in an American Bar Association Brown Bag Panel discussion entitled, "Importance of Using Plain Language," at the ABA offices in Washington, DC. Outline supplied.

April 11, 2000: I participated as a judge for the Government Contracts Moot Court Competition held by the George Washington University Law School at the Court of Federal Claims in Washington, DC. I have no notes, transcript, or recording. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

December 3, 1991: I participated in The Federal Agency Recycling Conference II in Washington, DC. I spoke on the importance of recycling in federal buildings. I have no notes, transcript or recordings. The address of the Environmental Protection Agency is 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

November 29-30, 1990: I participated on a panel Colloquium on Federal-State Relationships in Environmental Enforcement sponsored by the Environmental Law Institute in Westfields, VA. I discussed how the Department of Justice participated with State Attorneys General on certain cases. I have no notes, transcript or recordings. The address of the Environmental Law Institute is 2000 L Street, N.W., #620, Washington, DC 20036.

July 31, 1990: I provided opening remarks for the National Pollution Prevention Conference, Denver, CO. Remarks supplied.

November 13-16, 1989: I participated in the National Environmental Information Conference in Kansas City, Missouri. I discussed the importance of good data in building good enforcement cases. I have no notes, transcript or recordings. The address of the Environmental Protection Agency is 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

August 13-14, 1987: I participated in a workshop at the University of Delaware entitled, "Environmental Monitoring and Enforcement: Theory and Practice Workshop," Newark, DE. I discussed the importance of environmental penalty policies on providing consistency in enforcement settlements. I have no notes, transcript or recordings. The address of the Environmental Protection Agency is 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Christine Hooks, Judicial Profile: Hon. Nancy B. Firestone, U.S. Court of Federal Claims, Federal Lawyer, June 2011. Copy supplied.

Susan Rieff, Governing the Environment: The Public Sector and the Public Interest, May 2004. I discovered this article while performing an Internet search to ensure that my responses to this question were complete. The statement for which I am cited, however, was misattributed to me. The author has confirmed that the footnote citation should have been placed after the next sentence in the paragraph instead. Copy supplied.

Deirdre Davidson, On Lake Barcroft, Residents Find It's a Waterful Life, Washington Post, Aug. 10, 1996. Copy supplied.

Joe Morgan, Lever Workers Shake, Rattle, Roll Packages, The Baltimore Sun, Sept. 19, 1990. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by President William Jefferson Clinton and unanimously confirmed by the Senate to a 15-year term as a judge for the United States Court of Federal Claims in 1998. My 15-year term expired on October 21, 2013, at which point I assumed senior status. The Court of Federal Claims has jurisdiction over claims for breach of contract, tax refunds, military and civilian pay and breach of Tribal trust responsibility. It also has jurisdiction over claims arising under the Fifth Amendment Takings Clause and over claims for compensation under the National Childhood Vaccine Injury Act. In addition to awarding money damages, judges on the court have the authority to grant equitable relief in cases filed by disappointed bidders who fail to obtain or retain contracts with the federal government.

I was appointed to be a judge on the Environmental Appeals Board for the Environmental Protection Agency by William Reilly, the Administrator of the Environmental Protection Agency, in 1992 and my term continued under Carol Browner. The Environmental Appeals Board has jurisdiction over the decisions of the agency's Administrative Law Judges and over the agency's permitting decisions.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

In my 15 years as a judge on the Court of Federal Claims, I have presided over approximately 725 civil cases, which include approximately 560 that went to judgment.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

b. Provide citations for all opinions you have written, including concurrences and dissents.

Please see attached list of cases.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. Teledyne, Inc. v. United States, 50 Fed. Cl. 155 (2001), aff'd sub nom. Allegheny Teledyne Inc. v. United States, 316 F.3d 1366 (Fed. Cir. 2003).

In this case, I was tasked with resolving most of the Court of Federal Claims' Cost Accounting Standard ("CAS") cases involving the allocation of pension benefits from the sale of business segments. This case, as well as those involving General Electric, General Motors, Unisys and Raytheon, involve claims for hundreds of millions of dollars either owed to the United States or to the company, depending on the funding status of the subject pension plans. In this case of first impression, I resolved multiple questions concerning the threshold issue of the government's right to recover a portion of a company's pension surplus attributable to a business segment upon the sale of that segment to another company. After reviewing the text of the regulations, CAS regulatory history, and agency interpretations of those regulations, I held that the sale of a business segment constituted a segment closing, which required a segment closing adjustment to account for surplus assets or deficits attributable the government's contributions to qualified pension plans. I also held that, absent an express contract to the contrary, the regulation did not require a segment closing adjustment for pension surpluses or deficits attributable to firm-fixed-price contracts. I further held that pension surpluses attributable to the government contributions under flexibly-priced contracts are recoverable by the government as a current period adjustment at the time of the segment closing. Therefore, I granted-in-part and denied-in-part the plaintiffs' motion for partial summary judgment, and I granted-in-part and denied-in-part the defendant's cross-motion for partial summary judgment. These rulings were all upheld by the Federal

Circuit. The complaint and counterclaim were then dismissed on February 5, 2007, pursuant to a stipulated dismissal with prejudice filed by all parties.

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2. Gen. Elec. Co. v. United States, 92 Fed. Cl. 798 (2010) ("GE IV").

This case also involves a government claim for reimbursement of pension costs associated with the sale of various General Electric ("GE") segments. The opinion cited above is the fourth in a series of opinions seeking to resolve the treatment of pension assets and liabilities transferred by GE as part of the sale of two of its business segments. I addressed whether the plaintiff's pay-as-you-go post-retirement benefit costs following the 1993 closing of two of its business segments were to be included as part of the segment closing adjustments for pension costs required for each segment under CAS 413. Due to the complexity of the interrelationship of the various CAS and Federal Acquisition Regulation provisions to the measurement, allocation and payment of PRB costs, I called for expert testimony as to how these provisions are applied by accountants in practice. I held that non-compellable pay-as-you-go post-retirement benefits were not subject to a CAS segment closing adjustment, and that costs associated with those plans could not be offset from pension surpluses in the segment closing adjustment. I therefore granted the defendant's motion for partial summary judgment as to inclusion of non-compellable pay-as-you-go post-retirement benefits. The case is still pending, and I have issued five GE decisions in total in the litigation: Gen. Elec. Co. v. United States, 60 Fed. Cl. 782 (2004) ("GE I"); Gen. Elec. Co. v. United States, 84 Fed. Cl. 129 (2008) ("GE II"); Gen. Elec. Co. v. United States, 84 Fed. Cl. 566 (2008) ("GE III"); and Gen. Elec. Co. v. United States, 112 Fed. Cl. 1 (2013) ("GE V").

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3. Gen. Motors Corp. v. United States, 78 Fed. Cl. 336 (2007).

This General Motors case concerns the treatment of pension assets and liabilities transferred by General Motors as part of the sale of one of its business segments. In my 2007 decision, I addressed what actuarial assumptions associated with interest and mortality rates for pension plans should be used to calculate segment closing adjustments to pension costs under CAS 413 for pension plans that have not been terminated. Prior to ruling, I received affidavits and testimony of four expert witnesses from the government and the plaintiff on how pension actuaries use different assumptions depending on whether they are valuing ongoing pension plans or settling pension liabilities. I held that the plain language of CAS 413 and the subsequent revisions required that a contractor use the actuarial assumptions developed under CAS 412.40(b)(2) to calculate the actuarial liability of a segment's pension plan when the pension plan has not been terminated. I therefore granted the government's motion for partial summary judgment as to the actuarial assumptions to be used, and I denied the plaintiff's motion for partial summary judgment as to the same. The case is still pending. Other CAS-related issues were resolved in Gen. Motors Corp. v. United States, 66 Fed. Cl. 153, 161 (2005).

Plaintiff's Counsel:

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4. Unisys Corp. v. United States, 111 Fed. Cl. 191 (2013).

The Unisys case concerns the treatment of pension assets and liabilities transferred by Unisys as part of the sale of four of its business segments. In this decision, I addressed whether a deferred annuity plan should be included in a segment closing calculation and how fixed-price incentive contracts should be treated when calculating a segment closing adjustment. Prior to ruling, I received expert presentations from the government and plaintiff to help ascertain the extent to which the government contributed to the cost of pension plans on Unisys' firm-fixed price incentive contracts. I then held that deferred annuity plans should be included in a segment closing calculation and fixed-price incentive contracts should be included when calculating the Teledyne share at a 30% government participation rate. As a result of this holding, the amount owed to the government by Unisys was reduced to zero. I therefore ordered that judgment be entered in favor of the plaintiff. No appeal was filed.

Plaintiff's Counsel:

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5. Raytheon Co. v. United States, 105 Fed. Cl. 236 (2012) (“Raytheon III”), aff’d, No. 2013-5004 (Fed. Cir. Apr. 4, 2014).

The Raytheon case concerns the treatment of pension assets and liabilities transferred by Raytheon as part of the sale of three of its business segments. The parties moved for partial summary judgment on multiple issues, including whether Raytheon waived and transferred its claims for two of its segment closing adjustments under the terms of novation agreements entered into with Raytheon, the government, and the purchasers of each segment; and whether the court possessed jurisdiction to grant the government’s equitable adjustment claim because the government failed to comply with the requirements of the Contract Disputes Act. I denied the parties’ cross-motions for summary judgment on these two issues. As a result, I presided over a trial on these issues. The trial was conducted in two phases over the course of 11 days in October and November 2011. In the first phase, I heard testimony and received evidence regarding the issues surrounding the novation agreements. The second phase of the trial focused on the appropriateness of the various methods, assumptions, and calculations used by the parties in performing a post-1995 CAS 413 segment closing adjustment. In total, I heard live testimony from 21 witnesses and allowed 194 exhibits into evidence.

After trial, I concluded that the novation agreements for two of Raytheon’s segment closing adjustments did not act to waive and transfer its claims. I further determined that the court lacked jurisdiction over the government’s equitable adjustment claims. I therefore entered judgment of \$59.2 million plus interest in favor of the plaintiff. I issued two additional decisions in this case: Raytheon Co. v. United States, 92 Fed. Cl. 549 (2010) (“Raytheon I”) Raytheon Co. v. United States, 96 Fed. Cl. 548 (2011) (“Raytheon II”). The matter is pending before the Federal Circuit.

Plaintiff’s Counsel:

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6. National Westminster Bank, PLC v. United States, 58 Fed. Cl. 491 (2003),
aff'd, 512 F.3d 1347 (Fed. Cir. 2008).

In this case involving the application of a tax treaty between the United States and the United Kingdom, the plaintiff sought a refund for taxes paid after the Internal Revenue Service rejected its interest deduction for interest paid on funds it received from NatWest branches outside the United States to conduct its banking operations. Specifically, the plaintiff claimed that it was entitled to deduct the interest paid to those branches under the “separate entity” provision of Article 7 of the Convention for the Avoidance of Double Taxation. Both parties moved for partial summary judgment on the issue of the calculation of a branch’s deductible interest. In order to reach a decision, I was required to determine the proper interpretation of the treaty between the United States and the United Kingdom. After looking to the plain meaning of the text and various forms of legislative history, I found that the plaintiff’s interpretation was the proper one. As a result, I granted the plaintiff’s cross-motion for partial summary judgment and denied the defendant’s motion for partial summary judgment. The decision was appealed to the Court of Appeals for the Federal Circuit, which affirmed.

Plaintiff’s Counsel:

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7. Santa Barbara Applied Research, Inc. v. United States, 98 Fed. Cl. 536 (2011).

This case involved the question of whether an incumbent government contractor could challenge an agency's decision to in-source work that had been performed by that incumbent contractor. In 2008 Congress amended 10 U.S.C. § 2463 to provide that greater consideration be given to using the Department of Defense's ("DOD") civilian employees to perform DOD functions. In 2010, the Air Force notified the plaintiff that it intended to in-source certain functions under its contracts with the plaintiff. The plaintiff brought suit in the Court of Federal Claims claiming that the Air Force's statutorily mandated cost analysis was erroneous and resulted in an improper in-sourcing decision.

The government moved to dismiss the complaint for lack of standing and failure to state a claim for relief, and both parties moved for judgment on the administrative record. I held that the government made its in-sourcing decision "in connection with a procurement" for the purposes of the Tucker Act because, in effect, it represented a decision to stop procuring services from outside contractors like the plaintiff. I also rejected the government's argument the plaintiff lacked prudential standing, holding that the concept of prudential standing did not apply to bid protests under the Tucker Act. On the merits, however, I rejected the plaintiff's allegation that the Air Force's in-sourcing decision was irrational due to faulty cost calculations. I therefore denied the defendant's motions to dismiss for lack of standing and failure to state a claim; denied the plaintiff's motion for judgment on the administrative record; and granted the defendant's motion for judgment on the administrative record.

Plaintiff's Counsel:

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Defendant's Counsel:

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8. Macy Elevator, Inc. v. United States, 97 Fed. Cl. 708 (2011).

This case is an example of the Court of Federal Claims' many Rails to Trails cases involving the right of landowners to just compensation under the Fifth Amendment when recreational trails are authorized by the Surface Transportation Board within abandoned railroad corridors. The plaintiffs in this case are landowners who claimed to own the fee interest in land underlying a previously-operating railroad line. They alleged that the government had affected a Fifth Amendment Taking of their fee interest in the railroad right-of-way when it converted the line to a recreational trail under the "railbanking" provision of the Trails Act. Both parties moved for summary judgment. There were three classes of deeds that conveyed an easement and additional subclasses, each of which required its own analysis. Since this was a case of first impression for railbanking in Indiana, I was required to perform an analysis of the relevant state statutes and apply it to the language of the deeds at issue to determine the scope of the easement that had been granted. Based on that, I found that the government had in fact affected a taking for many of the classes of deeds. I therefore granted-in-part and denied-in-part both parties' motions for summary judgment. The case was not appealed by either party and thus terminated. When a similar case came before the Indiana Supreme Court in Howard v. United States, 964 N.E.2d 779 (Ind. 2012), the Indiana Court followed the approach that I took.

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9. Morganti National, Inc. v. United States, 49 Fed. Cl. 110 (2001), aff'd, 36 F. App'x 452 (Fed. Cir. 2002).

This case involved the termination of a government contract. The plaintiff was a contractor who alleged that the government's termination of the contract for default should be converted to a termination for convenience. Because this case dealt with a significant number of disputed factual issues, I held a 19-day trial at which I heard testimony from over 25 witnesses who presented more than 400 exhibits. The witnesses testified as to the nature of the contract and modifications thereof, the completion of the work, and various other factual issues, after which I ruled that the termination for default was justified and therefore must be upheld. The case was appealed to the Court of Appeals for the Federal Circuit, which affirmed.

Plaintiff's Counsel:

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10. Nat'l Treasury Emps. Union, et al. v. United States, 54 Fed. Cl. 791 (2002).

This case reached me after the plaintiff union had reached a proposed settlement with the government for a class of 210,000 members of approximately \$173 million. I held a fairness hearing to determine whether the settlement could

proceed. After the hearing, I ruled that none of the objections to the lump sum payment, the accuracy of the databases, the remedial methodology, the settlement distribution plan, or the information provided to the class undermined the fairness of the settlement as a whole. I therefore ruled that the settlement was fair, adequate, and reasonable. I thereafter monitored the settlement. I received quarterly reports from the trustee of the settlement for several years before the settlement funds were fully dispersed and the settlement was completed.

Plaintiff's Counsel:

Gregory James O'Duden
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(202) 572-5645

Defendant's Counsel:

Judry Laeb Subar
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Civil Division
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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Teledyne, Inc. v. United States, 50 Fed. Cl. 155 (2001), aff'd sub nom. Allegheny Teledyne Inc. v. United States, 316 F.3d 1366 (Fed. Cir. 2003).

Plaintiff's Counsel:

Harvey G. Sherzer
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(202) 420-4745

Defendant's Counsel:

C. Coleman Bird
United States Department of Justice

Civil Division
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Washington, DC 20044
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2. Gen. Elec. Co. v. United States, 92 Fed. Cl. 798 (2010) (“GE IV”).

Plaintiff’s Counsel:

Richard Douglas Bernstein
Willkie, Farr & Gallagher, LLP
1875 K Street, N.W.
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(202) 303-1108

Defendant’s Counsel:

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3. Gen. Motors Corp. v. United States, 78 Fed. Cl. 336 (2007).

Plaintiff’s Counsel:

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Defendant’s Counsel:

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4. Unisys Corp. v. United States, 111 Fed. Cl. 191 (2013).

Plaintiff's Counsel:

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Defendant's Counsel:

C. Coleman Bird
Jeffrey Andrew Regner
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5. Raytheon Co. v. United States, 105 Fed. Cl. 236 (2012) ("Raytheon III"),
aff'd, No. 2013-5004 (Fed. Cir. Apr. 4, 2014).

Plaintiff's Counsel:

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Defendant's Counsel:

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6. Santa Barbara Applied Research, Inc. v. United States, 98 Fed. Cl. 536 (2011).

Plaintiff's Counsel:

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Defendant's Counsel:

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United States Department of Justice
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7. Macy Elevator, Inc. v. United States, 97 Fed. Cl. 708 (2011).

Plaintiff's Counsel:

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Defendant's Counsel:

Lary Cook Larson
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8. National Westminster Bank, PLC v. United States, 58 Fed. Cl. 491 (2003), aff'd, 512 F.3d 1347 (Fed. Cir. 2008).

Plaintiff's Counsel:

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9. Morganti National, Inc. v. United States, 49 Fed. Cl. 110 (2001), aff'd 36 F. App'x 452 (Fed. Cir. 2002).

Plaintiff's Counsel:

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Defendant's Counsel:

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10. G4S Tech. CW LLC v. United States, 109 Fed. Cl. 708 (2013).

Plaintiff's Counsel:

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Defendant's Counsel:

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e. Provide a list of all cases in which certiorari was requested or granted

Abrahamsen v. United States, 44 Fed. Cl. 260 (1999), aff'd, 228 F.3d 1360 (Fed. Cir. 2000), cert. denied sub nom. Willoughby v. United States, 532 U.S. 957,

U.S., Apr. 02, 2001.

White Mountain Apache Tribe v. United States, 46 Fed. Cl. 20 (Fed. Cl. 1999), rev'd, 249 F.3d 1364 (Fed. Cir. 2001), aff'd and remanded, 537 U.S. 465 (2003).

Am. Fed'n of Gov't Emps., AFL-CIO v. United States, 46 Fed. Cl. 586 (2000), aff'd on other grounds, 258 F.3d 1294 (Fed. Cir. 2001), cert. denied, 534 U.S. 1113 (2002).

Teledyne, Inc. v. United States, 50 Fed. Cl. 155 (2001), aff'd sub nom. Allegheny Teledyne Inc. v. United States, 316 F.3d 1366 (Fed. Cir. 2003), cert. denied sub nom. Gen. Motors Corp. v. United States, 540 U.S. 1068 (2003).

Christopher Vill., LP v. United States, 53 Fed. Cl. 182 (2002), aff'd, 360 F.3d 1319 (Fed. Cir. 2004), cert. denied, 543 U.S. 1146 (2005).

Nw. LA Fish & Game Pres. Comm'n v. United States, 79 Fed. Cl. 400 (2007), aff'd, 574 F.3d 1386 (Fed. Cir. 2009), cert. denied, 558 U.S. 1113 (2010).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Over the course of 15 years, I have authored approximately 400 decisions. As a result, the below list of cases in which I was reversed in whole, reversed in part, or affirmed on other grounds represents a very small percentage of my decisions.

Am. Fed'n of Gov't Emps., AFL-CIO v. United States, 46 Fed. Cl. 586 (2000), aff'd, 258 F.3d 1294 (Fed. Cir. 2004), cert. denied, 122 S. Ct. 920 (2002). The American Federation of Government Employees ("AFGE") challenged the determination of the Defense Logistics Agency ("DLA") that it was more economical to contract out to a private contractor the operation of three DLA material distribution depots than to use in-house personnel. I held that the plaintiffs lacked standing to challenge DLA's cost comparison, but that the Administrative Dispute Resolution Act ("ADRA") did not limit standing. On appeal, the Federal Circuit affirmed that plaintiffs lacked standing, but held that the ADRA limited standing to actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by failure to award the contract. The decision was eventually modified by Congress, which authorized government employee claims before the Government Accountability Office.

Brach v. United States, 98 Fed. Cl. 60 (2011), aff'd, 443 F. App'x 543 (Fed. Cir. 2011). Plaintiff alleged that his tax refund was erroneously denied as untimely

and that he was entitled to recovery on other grounds. I held that some claims were time-barred, other claims lacked subject matter jurisdiction due to his failure to fully pay taxes for those years, and that the government had not definitively and finally agreed to refund the claimed amount. On appeal, the Federal Circuit held that the court did not lack subject matter jurisdiction, but that the claims still failed due to the lack of any facts showing the existence of a contract between the plaintiff and the Internal Revenue Service.

Cameron v. United States, 106 Fed. Cl. 551 (2012), rev'd, 2013 WL 6050867 (Fed. Cir. Nov. 18, 2013). This case arose after a retired U.S. Army Reserve Colonel—and member of the Oregon Army National Guard—was separated from the federal Active Guard Reserve without first being considered by a service retention board. After finding that the regulatory language addressing retention was ambiguous, I concluded that the Army reasonably interpreted its own regulations, and subsequently affirmed the decision of the Army Board for Correction of Military Records. On appeal, the government conceded for the first time that the plaintiff was eligible for automatic consideration by a retention board. In a non-precedential opinion, the Federal Circuit reversed the trial court and remanded the case, holding that the plaintiff was entitled to an opportunity to be considered for retention by either the Oregon National Guard or the National Guard Bureau.

Data Marketing Co. v. United States, 55 Fed. Cl. 685 (2003), aff'd-in-part, vacated-in-part, 107 F. App'x 187 (Fed. Cir. 2004). Contractors that entered into a joint venture with the National Technology Information Service ("NTIS") to provide the public with procurement-related data from the Department of Defense ("DOD") contended that they were entitled to damages for breaches of their respective joint venture agreements. I held that the contractor could not assert breach of contract claims against the United States based on the actions of DOD. On appeal, the Federal Circuit held that I properly dismissed appellants' claims against DOD and Data Marketing's claims against NTIS, but erred in dismissing plaintiff Standard Development Association's claim of breach of express and implied contractual provisions that required NTIS to cooperate in the transition to a new program by exercising good faith efforts to keep it intact through the participation of another organization.

La Van v. United States, 56 Fed. Cl. 580 (2003), aff'd-in-part, vacated-in-part, 382 F.3d 1340 (Fed. Cir. 2004). Plaintiffs sought restitution and damages for the government's failure to honor the terms of a conversion transaction following the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. I held that restitution was appropriate, but that plaintiffs lacked standing for expectancy or reliance damages. Additionally, I dismissed the takings claim. On appeal, the Federal Circuit affirmed the finding of a formation of a contract and the dismissal of the takings claim but reversed as to plaintiffs' standing to recover expectancy damages.

Lion Raisins, Inc. v. United States, 58 Fed. Cl. 391 (2005), aff'd, 416 F.3d 1356

(Fed. Cir. 2005). Raisin marketers alleged a taking by the Raisin Administrative Committee (“RAC”) of their share of money generated by a reserve raisin pool required by statute. I held that the RAC was a non-appropriated fund instrumentality (“NAFI”) and thus could not waive sovereign immunity to grant the court subject matter jurisdiction. This holding adopted the decision of another judge in a parallel case by the same plaintiff. On appeal, the Federal Circuit held that a claim against a NAFI is a claim against the United States and thus grants jurisdiction, but that the complaint did not properly allege a takings claim.

Nicon, Inc. v. United States, 51 Fed. Cl. 324 (2001), vacated, 331 F.3d 878 (Fed. Cir. 2003). Nicon’s contract was terminated for convenience before a notice to proceed was issued. I held that Nicon’s claim for unabsorbed home office overhead was properly denied. On appeal, the Federal Circuit held that Nicon could recover unabsorbed overhead costs as part of its termination for convenience settlement if a reasonable method of allocation could be determined on the facts of the case and the contractor could otherwise satisfy strict prerequisites for recovery of unabsorbed overhead costs.

Northwest Louisiana v. United States, 62 Fed. Cl. 760 (2004), rev’d, 446 F.3d 1285 (Fed. Cir. 2006). The state of Louisiana alleged that actions of the Army Corps of Engineers resulted in a trespass or continuing nuisance, as well as an unlawful appropriation of lands, waters, and properties, without full and fair just compensation. I held that the claim was time-barred based on the date that the minimum pool level was set by the Corps of Engineers. On appeal, the Federal Circuit held that the claim was not time-barred based on the date of the Corps of Engineers’ final refusal to reduce the minimum pool level.

Poole v. United States, No. 02-454 (March 18, 2003), rev’d, No. 03-5078 (Fed. Cir. May 24, 2004). Poole sought an increased disability rating from the military. I held that because his discharge was voluntary, the court lacked jurisdiction over the case. On appeal, the Federal Circuit reversed and remanded having resolved in another case that a voluntary discharge does not deprive the court of jurisdiction over a complainant seeking disability benefits.

Rotoli v. Sec’y of Health & Human Servs., 89 Fed. Cl. 71 (2009) rev’d sub nom. Porter v. Secretary of Health and Human Services, 663 F.3d 1242 (Fed. Cir. 2011). Plaintiffs sought review of a special master’s decision denying compensation under the National Childhood Vaccine Injury Act for plaintiffs’ autoimmune hepatitis that allegedly resulted from a hepatitis B vaccination. I held that the special master’s decisions were not in accordance with the law due to a recent Federal Circuit opinion prohibiting special masters from cloaking their causation determination under the guise of a credibility determination. On appeal, a divided panel of the Federal Circuit held that the special master had properly performed the credibility and causation determinations, and was permitted to find certain experts more credible than others.

Texas Peanut Farmers v. United States, 59 Fed. Cl. 70 (2003), vacated, 409 F.3d

1370 (Fed. Cir. 2005). Peanut farmers whose crops were reinsured by the Federal Crop Insurance Corporation alleged that their policies were improperly and unfairly adjusted due to an act of Congress, causing a reduction in monetary recovery for lost crops. I held that pursuant to the jurisdictional statute to which the farmers agreed to be bound, subject matter jurisdiction over their breach of contract claims lay in the United States district court in the district in which their peanut farms were located. On appeal, the Federal Circuit held that the Court of Federal Claims did not have jurisdiction but that instead of dismissing the case, it should have been transferred to the district court.

United Keetowah Band v. United States, 67 Fed. Cl. 695 (2005), rev'd, 480 F.3d 1318 (Fed. Cir. 2007). Keetoowah Band of Cherokee Indians sought compensation for the extinguishment of all right, title, and interest to Arkansas Riverbed Lands, as well as damages for breaches of the government's fiduciary duties with respect to Arkansas Riverbed Lands and minerals therein. The Cherokee Nation intervened to file a motion to dismiss for failure to join an indispensable party and for lack of jurisdiction. I held that the Cherokee Nation was indispensable and, because it did not give its consent to be sued, dismissal was required. On appeal, the Federal Circuit held that the Cherokee Nation did not have a sufficient interest to permit it to intervene as a party that was necessary to adjudicate the Band's action.

Walther v. Sec'y of Health & Human Servs., 69 Fed. Cl. 123 (Fed. Cl. 2005) vacated and remanded, 485 F.3d 1146 (Fed. Cir. 2007). Plaintiff sought review of a special master's decision denying compensation under the National Childhood Vaccine Injury Act for the plaintiff's acute disseminate encephalomyelitis that allegedly resulted from a diphtheria-tetanus vaccination. I held that the plaintiff had to prove causation by a preponderance of evidence, as the special master required. Therefore, the special master's decision was not arbitrary and capricious and therefore must be affirmed. On appeal, the Federal Circuit held, based on a decision that it had issued after my ruling, that the plaintiff was not required to eliminate other potential causes of her illness in order to recover from the government and therefore remanded the case back directly to the special master.

Western Management, Inc. v. United States, 101 Fed. Cl. 105 (2001), aff'd-in-part, rev'd-in-part, 498 F. App'x 10 (Fed. Cir. 2012). Western Management sought a refund of tax penalties paid to the IRS. I held that the Tax Court had previously resolved the issue on some counts, that another claim was time-barred, and that the plaintiff was liable for the property taxed. On appeal, the Federal Circuit held that the Tax Court did not resolve the issue as I held, but that the liability of the plaintiff did not entitle them to any refund.

White Mountain Apache v. United States, 46 Fed. Cl. 20 (1999), rev'd, 249 F.3d 1364 (Fed. Cir. 2001), reversal aff'd, 123 S. Ct. 1126 (2003). The plaintiff tribe alleged that the government breached its trust with respect to certain property, and improvements thereon, held by the government in trust for the tribe. I held that

controlling legislation did not impose a fiduciary obligation on the government to maintain, protect, repair, and preserve Fort Apache for the financial benefit of the tribe, and that jurisdiction was lacking over tribe's monetary claim against the government for permissive waste, absent statutory authority for injunctive relief. On appeal, the Federal Circuit held that the statute in question created a trust relationship between United States and the tribe; the relationship included a fiduciary obligation on the part of the United States to maintain or restore buildings it controlled exclusively, and potentially to restore buildings upon transfer to the tribe, the breach of which could support a claim for money damages; and that the claim based on the United States' alleged breach of obligations thus came within jurisdiction of Court of Federal Claims. The Supreme Court held that the United States' breach of fiduciary duty to maintain and preserve the trust property gave rise to substantive claim for money damages under the Indian Tucker Act.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have filed all of my memorandum opinions using the federal judiciary's electronic filing system, which automatically publishes each opinion on the court website, <http://www.uscfc.uscourts.gov>. In addition, Westlaw, Lexis, and other publishers gather those opinions from the court website to include in their electronic databases.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

W. Chelsea Buildings, LLC v. United States, 109 Fed. Cl. 5 (2013), aff'd, No. 13-5066 (Fed. Cir. Feb. 12, 2014)

Rasmuson v. United States, 109 Fed. Cl. 267 (2013)

Voth Oil Co., Inc. v. United States, 108 Fed. Cl. 98 (2012)

Thomas v. United States, 106 Fed. Cl. 467 (2012)

Macy Elevator, Inc. v. United States, 105 Fed. Cl. 195 (2012)

Textainer Equip. Mgmt. Ltd. v. United States, 105 Fed. Cl. 69 (2012)

Big Oak Farms, Inc. v. United States, 105 Fed. Cl. 48 (2012)

Lamson v. United States, 101 Fed. Cl. 280 (2011)

Biery v. United States, 99 Fed. Cl. 565 (2011)

Textainer Equip. Mgmt. Ltd. v. United States, 99 Fed. Cl. 211 (2011)

Macy Elevator, Inc. v. United States, 97 Fed. Cl. 708 (2011)

Cent. Pines Land Co. v. United States, 107 Fed. Cl. 310 (2010)

Mike's Contracting, LLC v. United States, 92 Fed. Cl. 302 (2010)

Clark v. United States, 2007 WL 2142652 (Fed. Cl. July 17, 2007)

Cherbanoeff v. United States, 77 Fed. Cl. 490 (2007), aff'd, 300 F. App'x 933 (Fed. Cir. 2008)

Alost v. United States, 73 Fed. Cl. 480 (2006), aff'd sub nom., Morgan v. United States, 254 F. App'x 823 (Fed. Cir. 2007)

Block v. United States, 66 Fed. Cl. 68 (2005)

Royal Manor, Ltd. v. United States, 69 Fed. Cl. 58 (2005)

Seay v. United States, 61 Fed. Cl. 32 (Fed. Cl. 2004)

Lion Raisins, Inc. v. United States, 58 Fed. Cl. 391 (2003), aff'd, 416 F.3d 1356 (Fed. Cir. 2005)

La Van v. United States, 56 Fed. Cl. 580 (2003), aff'd in part, vacated in part and remanded, 382 F.3d 1340 (Fed. Cir. 2004)

Pax Christi Mem'l Gardens, Inc. v. United States, 52 Fed. Cl. 318 (2002)

Johnson v. United States, 49 Fed. Cl. 648 (2001), aff'd, 317 F.3d 1331 (Fed. Cir. 2003)

Carolina Power & Light Co. v. United States, 48 Fed. Cl. 35 (2000)

Gonzales v. United States, 48 Fed. Cl. 176 (2000), aff'd, 275 F.3d 1340 (Fed. Cir. 2001)

Boyle v. United States, 44 Fed. Cl. 60 (1999), aff'd, 200 F.3d 1369 (Fed. Cir. 2000)

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeal.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system

by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Under the Court of Federal Claims Rules, a disclosure statement must be filed by the plaintiff identifying the corporate identity of the party. I simply review the statement to ensure that I have no known affiliation with the corporation or party. To date I have not had to recuse myself from any case.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held a public office other than judicial office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held any offices in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation

from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not clerk for a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1977 – 1984

United States Department of Justice
Appellate Section and Environment and Natural Resources Division
950 Pennsylvania Avenue, N.W.
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Staff Attorney

1984 – 1985

United States Department of Justice
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Policy Legislation and Special Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Assistant Chief

1985 – 1989

United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Deputy Chief

1989 – 1992

United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Associate Deputy Administrator

1995 – 1998

United States Department of Justice

Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Deputy Assistant Attorney General

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

No.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

My first legal job after graduation from law school in 1977 was with the Environment and Natural Resources Division, United States Department of Justice. I was selected through the Honors Program and began working as a staff attorney in the Appellate Section, where I served until 1982, when I moved to the Environmental Enforcement Section. I worked on approximately 75 cases while in the Appellate Section, and approximately 15 cases as an attorney in the Environmental Enforcement Section. In addition, I served on special trial teams defending President Carter's selection of an oil port in Washington State and the 1980 decision to house Haitian boat-people at the Krome facility in Southern Florida.

In July 1984 I became the Assistant Chief of the Policy Legislation and Special Litigation Section of the Environment and Natural Resources Division. In this position, I helped to shape one of the nation's strongest and most important environmental statutes as one of two principal career spokespersons during reauthorization of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, also known as the Superfund.

In February 1985, I became the Deputy Chief for the Environmental Enforcement Section of the Environment and Natural Resources Division. In this position, my responsibilities included the supervision and management of over 100 attorneys, as well as guiding and shaping the Division's legal arguments in federal district court litigation arising from the enforcement of the nation's environmental laws. In addition, I supervised and personally participated in the litigation and settlement of numerous high profile Superfund cases.

In May 1989, I moved to the United States Environmental Protection Agency ("EPA"), where I served as Associate Deputy Administrator. In

this role, I served as the principal career policy coordinator in the Office of the Administrator. I was responsible for reviewing the EPA's regulatory and science decisions and implementing major environmental initiatives, including the initiative of EPA's 33/50 Pollution Prevention Program and the development of EPA's new multi-program approach to environmental regulation. I also worked with the EPA Deputy Administrator in negotiating with the Office of Management and Budget on budget and regulatory matters. In addition, I coordinated with EPA officials in discussing legislation in which EPA had an interest.

From May 1992 through September 1995, I served as a judge on the EPA's Environmental Appeals Board ("EAB"). In this position, I heard and decided administrative permit and enforcement appeals under all major federal environmental statutes administered by EPA. In addition, the EAB served as EPA's final decision maker on EEOC and related labor and employment matters. While on the EAB, I served as Chief Judge from March 1994 to March 1995.

In October 1995, I returned to the United States Department of Justice, where I became Deputy Assistant Attorney General of the Environment and Natural Resources Division. I supervised the Division's appellate and Supreme Court docket together with the Division's defensive environmental litigation; reviewed, edited and approved all briefs filed by the Division in the U.S. Court of Appeals and the U.S. Supreme Court; argued important Division cases; and coordinated the Division's work with the Office of the Solicitor General in seeking authorization for appeal and certiorari. I also was responsible as the Division's Ethics Officer for providing formal responses to ethical issues raised (outside of and within the Department of Justice) against Division attorneys and approving all motions for sanctions filed by the Division.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my tenure at the U.S. Department of Justice I represented numerous federal agencies, including the U.S. Departments of Interior, Energy, Defense and Transportation in connection with litigation challenging the environmental compliance of these agencies. In addition, I represented the EPA in affirmative litigation against alleged violators of the nation's environmental laws and for reimbursement under Superfund.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Overall, approximately 75% of my practice has been spent in litigation. I joined

the United States Department of Justice in 1977. From 1977 until 1984, I served as a litigation attorney and devoted 100% of my practice to litigation. After I became a manager in 1985, I only directly participated in litigation occasionally, appearing in court only in certain cases. However, the remainder of my time was spent supervising others who were engaged in litigation. I was responsible for reviewing their work, conducting settlement negotiations, and managing the section's overall litigation docket. From 1989 to 1995, during my time at the United States Environmental Protection Agency, I did not directly participate in litigation. When I returned to the United States Department of Justice in 1995 as Deputy Assistant Attorney General, I oversaw the litigation conducted by the Appellate and Environmental Defense Sections, as well as directly participating in litigation occasionally.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: > 99%
 - 2. state courts of record: < 1%
 - 3. other courts: 0%
 - 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 100%
 - 2. criminal proceedings: 0%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

- i. What percentage of these trials were:
 - 1. jury: 0%
 - 2. non-jury: 100%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

While an attorney at the Department of Justice, I was identified on the following Supreme Court briefs and requests for certiorari as one of the attorneys who participated in the drafting of the document.

Brief for the United States as Amicus Curiae Supporting Respondents, Midlantic Nat'l Bank v. N.J. Dep't of Env't Prot., 474 U.S. 494 (1986) (No. 84-801), 1985 WL 669575.

Brief for the United States as Amicus Curiae Supporting Petitioners, Williamson

Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985), 1984 WL 565763.

Brief for the Petitioner, Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984) (No. 83-196), 1983 U.S. S. Ct. Briefs LEXIS 833.

Brief for the Petitioner, Andrus v. State of Alaska, 451 U.S. 259 (1981) (No. 79-1890), 1980 WL 339693.

Petition for Writ of Certiorari, Andrus v. State of Alaska, 451 U.S. 259 (1981) (No. 79-1890), 1980 U.S. S. Ct. Briefs LEXIS 1397.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. National Wildlife Federation v. Gorsuch, 693 F.2d 156 (D.C. Cir. 1982) (Robinson, Wald, Bork, Circuit Judges)

At issue in this appeal was whether EPA had violated a mandatory duty under the Clean Water Act by failing to regulate dams as point sources. I was responsible for preparing the United States' briefs as appellant. The D.C. Circuit reversed the district court and held that EPA's decision to treat dam-induced water pollution as non-point source pollution was reasonable and entitled to deference.

Co-Counsel:

Peter R. Steenland, Jr.
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005
(202)-736-8532

Opposing Counsel:

Patrick H. Parenteau
(Formerly with National Wildlife Federation)
Vermont Law School
164 Chelsea Street
South Royalton, VT 05068
(802) 831-1305

2. No Oilport v. Carter, 520 F. Supp. 334 (W.D. Wash. 1981)
(Belloni, District Judge)

For a period of two years from 1979 to 1981, I was junior counsel for the Department of Justice in representing President Carter and Secretary of the Interior Andrus in connection with three actions challenging President Carter's decision to approve an oil pipeline to carry Alaskan crude oil from Port Angeles, Washington to Clearbrook, Minnesota. The three consolidated actions were brought by numerous environmental groups, a number of Indian Tribes and the city and county government of Port Angeles, Washington. My responsibilities included taking depositions of non-government witnesses and experts, participating in negotiations with the Tribes, and preparing large portions of the United States' summary judgment brief. I also participated in several days of argument on the motions for summary judgment filed by the United States and Northern Tier Pipeline Corporation. On January 9, 1981, the district court granted summary judgment to the United States on all issues other than the Tribes' claims relating to an alleged breach of trust responsibility concerning whether the Tribes' fishing rights would be adequately protected by the conditions placed on the permittee. Eventually, the company abandoned the project and the case became moot.

Co-Counsel:

Andrew F. Walch (deceased)
(formerly United States Department of Justice)

Robert H. Loeffler
Morrison & Foerster
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 887-1506

Opposing Counsel:

Craig L. Miller
Law Office of Craig L. Miller
711 East Front Street, Suite A

Port Angeles, WA 98362
(360) 457-3379

3. Bob Graham, Governor of Florida v. William French Smith, Attorney General, S.D. Fla.81-1497 (Joe Easton, District Judge) (no reported decision).

In 1981 the State of Florida sued the United States to force the closure of the Krome facility, a temporary detention site for Haitian refugees. At issue was the United States' compliance with various environmental statutes in establishing and maintaining the facility as a refugee camp. Florida argued that the facility could not maintain the then level of population without running afoul of state and federal environmental laws. Florida sued and sought a preliminary injunction to close the Krome facility and have the refugees moved out of the State of Florida. I was selected as one of three attorneys to participate in the special litigation team formed to address this lawsuit. My responsibilities included defending the depositions and then presenting the direct examination of the Krome Public Health doctor and camp sanitarian who were two of the federal government's key witnesses in defense of the United States' effort to keep the facility open. The district court denied the preliminary injunction, but placed the United States on a regular reporting schedule to ensure that efforts to limit the camp's population were contained and that it was being maintained in an environmentally sound manner.

Co-Counsel:

Judge Kathryn A. Oberly, Associate Judge (retired)
(Formerly United States Department of Justice)

Opposing Counsel:

J. Skelly Wright, Jr.
(Formerly with Morgan, Lewis & Beckius)

4. United States v. Hooker Chemicals & Plastics Corporation, 680 F. Supp. 546 (W.D.N.Y.) 1988) (Curtin, Chief Judge)

For a two year period, from 1983 to 1984, I served as co-counsel in the above-captioned Love Canal litigation. During that period, I was responsible for collecting all available documents for discovery, establishing the litigation database, managing over ten paralegals and support staff, and helping to select experts and review affidavits in support of the United States' motion for partial summary judgment on liability against Hooker Chemicals. While I participated in the drafting of the motion for partial summary judgment on liability, I changed jobs before it was argued and decided. The motion was not decided until 1988 and the case was finally settled in 1999.

Co-Counsel:

Albert M. Cohen
Loeb & Loeb
1011 Santa Monica Boulevard, Suite 2200
Los Angeles, CA 90067
(310) 282-2228

New York Attorney General
120 Broadway
New York, NY 10271
(202) 861-3900

Opposing Counsel:

Steve K. Yablonski
Piper Rudnick LLP
1200 19th Street, N.W.
Washington, DC 20036
(202) 861-3874

5. State of New York v. General Electric, 592 F. Supp. 291 (N.D.N.Y. 1984)
(Miner, District Judge)

In this case, General Electric ("GE") attempted to dismiss a cleanup action brought by New York State on several grounds, including the argument that Superfund does not extend to the cleanup of sites that were not established for waste disposal purposes. GE argued that they were not liable to clean up a drag strip that had been contaminated with transformer oil from a GE facility. While GE conceded it had intended to get rid of the waste when it gave the waste oil to the drag strip for dust suppression purposes, GE argued that this was not a disposal within the meaning of the federal Superfund law. I was responsible for briefing and arguing against GE's motion to dismiss and based largely on the arguments the United States made as amicus curiae, the district court denied the motion to dismiss and concluded that the statute extended to GE's disposal arrangement with the drag strip owner. As a result, GE was required to pay for the cleanup.

Co-Counsel:

Norman Spiegel
New York State Department of Law
Environmental Protection Bureau
120 Broadway
New York, NY 10271
(212) 416-8454

Opposing Counsel:

Allan J. Topol
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044
(202) 662-6000

6. Oregon Natural Desert Association v. Dombeck, 172 F.3d 1092 (9th Cir. 1998)
(Schroeder, Ferris, Tashima, Circuit Judges)

At issue in this matter was the extent to which federal permit holders may be subject to Clean Water Act citizen enforcement for pollution from indirect non-profit sources of pollution. The district court concluded that federal cattle grazing permittees must obtain state Clean Water Act approval under Section 401 of the Clean Water Act before seeking a federal grazing permit. This decision for the first time extended the reach of Section 401 of the Clean Water Act to so-called non-point source pollution, namely pollution that is not directed through a pipe or other conduit into a water of the United States. Given the interest of so many federal agencies in protecting against this expansion of Section 401 of the Clean Water Act, I was asked as the Deputy Assistant Attorney General to prepare the brief and present the argument in the case before the Ninth Circuit. On July 22, 1998, the Ninth Circuit overturned the district court decision and, adopting the United States' argument on appeal, concluded that Section 401 does not extend to federal licenses that cause pollution solely from non-point sources.

Co-Counsel:

David E. O'Leary
1300 SW Fifth Avenue, Suite 2400
Portland, OR 97201
(503) 778-5203

Opposing Counsel:

Michael Axline
1050 Fulton Avenue, #100
Sacramento, CA 95825
(916) 488-6688

7. United States ex rel. Tennessee Valley Authority v. Tennessee Water Quality Control, 717 F.2d 992 (6th Cir. 1983) (Edwards, Lively, Circuit Judges, Guy, District Judge)

I briefed and argued before the Sixth Circuit this case on behalf of the United

States as *amicus curiae*. The United States was concerned with extending the reach of the Clean Water Act permitting requirements to the construction and operation of dams. The Sixth Circuit adopted the Justice Department's argument on behalf of the Environmental Protection Agency ("EPA") and held that Tennessee Valley Authority was not required to obtain a state water quality permit for reconstruction and operation of a dam on the grounds that the EPA had reasonably determined that dams should be treated as non-point sources of pollution.

Co-Counsel:

James Fox, Associate General Counsel
Tennessee Valley Authority
400 Summit Hill Drive
Knoxville, TN 37902
(615) 632-4151

Opposing Counsel:

Michael Pearigen
Luna Group, PLLC
333 Unions Street, Suite 300
Nashville, TN 37201
(615) 254-9146

8. *Pacific Legal Foundation v. Andrus*, 657 F.2d 829 (6th Cir. 1981)
(Edward, Kennedy, Circuit Judges, Newblatt, District Judge)

At issue in this case was whether the Secretary of the Interior was required to prepare an environmental impact statement under the National Environmental Policy Act ("NEPA") prior to listing seven mussel species under the Endangered Species Act ("ESA"). I briefed and argued the appeal on behalf of Secretary Andrus. On appeal, we argued that the ESA displaced NEPA. The Sixth Circuit agreed and held, based on the conflicting goals of the ESA and NEPA, that the Secretary of the Interior is relieved of his NEPA obligations when listing species under ESA.

Opposing Counsel:

Ronald A. Zumbrun
(Formerly with Pacific Legal Foundation)
Zumbrun Law Firm
47 Robert Court East
Acata, CA 95521
(707) 825-0466

9. Save the Bay, Inc. v. US Corps of Engineers, 610 F.2d 322 (5th Cir.1980), cert. denied, 449 U.S.900 (1980) (Brown, Tjoflat, Garza, Circuit Judges)

I briefed and argued this case concerning the scope of the Corps of Engineers' ("Corps") National Environmental Policy Act obligations when issuing a dredge and fill permit. Citizens seeking to block construction of a DuPont facility in Gulfport, Mississippi argued that the Corps' permit authorizing the construction of an outfall triggered an obligation to evaluate the environmental impacts of the entire facility. The Corps had limited its environmental review to construction of the outfall. The Court of Appeals affirmed the Corps' decision to limit its environmental review to the specific federal action at issue, here the outfall permit.

Co-Counsel:

David Sebree (retired)
(Formerly with Legal Department of E.I. DuPont)

Opposing Counsel:

Stanford E. Morse, Jr.
Law Offices of Stanford E. Morse, Jr.
2400 14th Street
Gulfport, Mississippi 39501
(228) 864-4525

10. District of Columbia v. Schramm, 631 F.2d 854 (D.C. Cir. 1979) (Lumbardi, Senior Judge for the Second Circuit, Tamm, Mikva, Circuit Judges)

I briefed and argued this appeal. At issue in this appeal was whether the Environmental Protection Agency's ("EPA") decision not to veto a state-issued Clean Water Act permit is subject to judicial review. The D.C. Circuit agreed with the United States' position that a state-issued water permit was subject to review only in state court, and that the Clean Water Act did not provide for review of EPA decisions not to veto state permits.

Co-Counsel:

Thomas A. Deming
Office of the Attorney General
State of Maryland
200 Saint Paul Place
Baltimore, MD 21202-2202
(410) 576-6300

Opposing Counsel:

Frederick F. Stiehl (retired)
(Formerly Assistant Corporation Counsel for Washington, DC)

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to the significant litigation identified above, I received the Attorney General Award for Distinguished Service in 1998 for my work on the settlement between the United States and Shell Oil Company with regard to the cleanup of the Rocky Mountain Arsenal outside of Denver, Colorado. Together with Myles Flint, the then Deputy Assistant Attorney General in the Environment and Natural Resources Division, we secured the cleanup of one of the nation's most contaminated federally owned hazardous waste sites.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I am currently co-teaching Federal Litigation Practice: Litigating Challenges to Federal Agency Decisions with Sheila Jones in the Spring 2014 Semester at Georgetown University Law Center. The course provides students with an introduction to federal practice associated with cases challenging agency decision-making on the administrative record from filing a complaint to arguing various motions in a court setting. Syllabus supplied.

I co-taught Takings with Judge Eric Bruggink in Fall 2000, Fall 2001, and Spring 2004; with Timothy J. Dowling in Spring 2004, Spring 2006, and Spring 2008; and with Robert Meltz in Spring 2010 and Spring 2012 at Georgetown University Law Center. The course was a survey class of all major Supreme Court takings cases that was designed to trace the evolution of takings jurisprudence in the Supreme Court, involving mock arguments of each case along with a discussion of the case's significance. Spring 2012 Syllabus supplied.

I co-taught Environmental Law with Lois Schiffer each Fall from 1986 to 1999 at Georgetown University Law Center. The course was a survey course designed to give students a working knowledge of key environmental statutes. No syllabus available.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have none.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have been an adjunct professor at Georgetown University Law Center for over 25 years and plan to continue that affiliation and to teach in the next year.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

Please see attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any conflicts of interest. Under the Court of Federal Claims Rules, a disclosure statement must be filed by the plaintiff identifying the corporate identity of the party. I review the list of parties and the statement to ensure that I have no known affiliation with the corporation or party. To date I have not had to rescue myself from any case. When I first joined the bench, I did not take any cases from my former division at the Department of Justice for a year in order to avoid any appearance of conflict.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow the same procedures I have followed for the past 15 years to avoid any conflict or appearance of conflict.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I do not engage in any legal pro bono work. I do however teach and take time to participate in mentoring law students and high school students with limited means regarding opportunities in the practice of law.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In accordance with 28 U.S.C. § 178, I wrote to President Obama on January 22, 2013, requesting reappointment to the Court of Federal Claims. On August 15, 2013, I spoke with an official from the White House Counsel's Office to confirm my interest in reappointment. On September 4, 2013, I was informed that the White House Counsel's Office was interested in pursuing reappointment. Since September 10, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 1, 2013, I met with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On April 10, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Firestone, Nancy B.	2. Court or Organization United States Court of Federal Claims	3. Date of Report 4/10/2014
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 4/10/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2013 to 4/1/2014
7. Chambers or Office Address U.S. Court of Federal Claims National Courts Building 717 Madison Place, NW Washington, DC 20005		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Adjunct Professor	Georgetown University Law Center
2.	
3.	
4.	
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Firestone, Nancy B.	4/10/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2012	Georgetown University Law Center	\$2,500.00
2. 2014	Georgetown University Law Center	\$3,750.00
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.**(Dollar amount not required except for honoraria.)*☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.**(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
 Page 3 of 6

Name of Person Reporting	Date of Report
Firestone, Nancy B.	4/10/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Wells Fargo Bank NA	Mortgage on rental property	N
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

Page 4 of 6

Name of Person Reporting	Date of Report
Firestone, Nancy B.	4/10/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-50 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

1. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. DOJ Credit Union (Cash Account)	A	Interest	J	T	Exempt				
2. Resverlogix Corp.	A	Dividend	J	T					
3. Wells Fargo Bank NA (Cash Account)	A	Interest	K	T					
4. TD Ameritrade (Cash Account)	A	Dividend	L	T					
5. Rental Property, Arlington, VA	E	Rent	J	W					
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)					
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value				

FINANCIAL DISCLOSURE REPORT
Page 5 of 6

Name of Person Reporting	Date of Report
Firestone, Nancy B.	4/10/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

Page 6 of 6

Name of Person Reporting	Date of Report
Firestone, Nancy B.	4/10/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Nancy B. Firestone*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		93	353	Notes payable to banks-secured (autos)		30	108
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule			650	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		474	830
Real estate owned – see schedule	1	630	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		62	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		504	938
				Net Worth	1	281	065
Total Assets	1	786	003	Total liabilities and net worth	1	786	003
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Listed Securities

Resverlogix Corp. stock	\$ 650
Total Listed Securities	\$ 650

Real Estate Owned

Personal residence	\$ 1,200,000
Rental property	430,000
Total Real Estate Owned	\$ 1,630,000

Real Estate Mortgages Payable

Personal residence	\$ 157,047
Rental property	317,783
Total Real Estate Mortgages Payable	\$ 474,830

AFFIDAVIT

I, Nancy B. Firestone, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/11/14
(DATE)



Nancy Firestone
(NAME)

Brigette Tenor
(NOTARY)

BRIGETTE TENOR
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires October 31, 2018

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR JUDICIAL NOMINEES**

PUBLIC

1. **Name:** State full name (include any former names used).

Lydia Kay Griggsby
2. **Position:** State the position for which you have been nominated.

Judge, United States Court of Federal Claims
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: United States Senate Judiciary Committee
 Hart Senate Office Building, Suite 221
 Washington, DC 20510

Residence: Silver Spring, Maryland
4. **Birthplace:** State year and place of birth.

1968; Baltimore, Maryland
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1990 – 1993, Georgetown University Law Center; J.D., 1993
1986 – 1990, University of Pennsylvania; B.A., 1990
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2006 – present
United States Senate
Committee on the Judiciary, Chairman Patrick Leahy
Hart Senate Office Building, Suite 221

Washington, DC 20510
 Chief Counsel for Privacy and Information Policy (2008 – present)
 Privacy Counsel (2006 – 2008)

2004 – 2005
 United States Senate
 Select Committee on Ethics
 Hart Senate Office Building, Suite 220
 Washington, DC 20510
 Counsel

1998 – 2004, Summer 1991
 United States Attorney's Office for the District of Columbia
 Civil Division
 555 Fourth Street, NW
 Washington, DC 20530
 Assistant United States Attorney (1998 – 2004)
 Summer Law Clerk (Summer 1991)

1995 – 1998
 United States Department of Justice
 Civil Division, Commercial Litigation Branch
 950 Pennsylvania Avenue, NW
 Washington, DC 20530
 Trial Attorney

1993 – 1995
 DLA Piper, LLP
 The Marbury Building
 6225 Smith Avenue
 Baltimore, Maryland 21209
 Associate Attorney

Summer 1992
 Venable, LLP
 750 East Pratt Street
 Suite 900
 Baltimore, Maryland 21202
 Summer Associate

September 1990 – May 1991
 Georgetown University Law Center
 Edward Bennett Williams Law Library
 111 G Street, NW
 Washington, DC 20001
 Student Librarian

Other Affiliations (Uncompensated):

2011 – 2012
The Society, Incorporated
c/o Stoddard Baptist Home
1818 Newton Street, NE
Washington, DC 20010
Vice President, Washington, DC Chapter (2011 – 2012)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Professional Honors:

Department of Justice Special Achievement Award (2003, 2000, 1999, 1997)
Inspector General's Award for Enhancing the Quality of Life for Federally Assisted Housing Residents Through Civil Litigation, (2001)
Secretary of State Commendation Letter for Successful Civil Litigation in James C. Wood, Jr. ex rel. United States v. The American Institute in Taiwan (2001)
United States Attorney's Community Outreach Award (2000)
White House Closing the Circle Award for Successful Environmental Enforcement Litigation (2000)

Educational Honors:

American Criminal Law Review, Topics Editor (1992 – 1993)
Center for Applied Legal Studies Clinic (1991 – 1992)
Sphinx Senior Honor Society (1989 – 1990)
Onyx Honor Society (1989 – 1990)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Alliance of Black Women Attorneys (affiliate of the National Bar Association) (1993 – 1995)
American Bar Association (1993 – 1995; 2003 – 2004; 2013 – present)

Committee on Children's Rights Litigation (2003)
 Greater Washington Area Chapter (affiliate of the National Bar Association), Women
 Lawyers Division (1996 – 1998)
 National Bar Association (2012 – present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

1993, Maryland
 2000, District of Columbia

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2004
 United States Court of Appeals for the District of Columbia Circuit, 2000
 United States District Court for the District of Columbia, 1998 (inactive)
 United States Court of Federal Claims, 1995

There have been no lapses in membership although as noted my membership in the United States District Court for the District of Columbia is inactive. The United States District Court for the District of Columbia requires that attorneys renew their membership every three years to maintain active status. Since I completed my tenure with the U.S. Attorney's Office for the District of Columbia in 2004, I have not practiced before the U.S. District Court for the District of Columbia and I currently maintain provisional membership or inactive status.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Delta Sigma Theta Sorority, Incorporated (1987 – present)
 Parliamentarian, Washington, DC Alumnae Chapter (2008 – 2010)
 Folger Shakespeare Theater (2011 – present)
 Volunteer Usher (2011 – present)

Junior League of Washington (2011 – present)
 Pearls of the Patuxent River, Incorporated (2011 – present)
 Parliamentarian (2012 – 2013)
 The Society, Incorporated (2007 – present)
 Member, National Chapter Establishment Committee (2013 – present)
 Member, National Nominating Committee (2011 – 2013)
 Vice President, Washington, DC Chapter (2011 – 2012)
 University of Pennsylvania Secondary School Committee (2000 – 2006)

- b. The American Bar Association’s Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Membership in The Junior League of Washington; Delta Sigma Theta Sorority, Incorporated; The Society, Incorporated; and The Pearls of the Patuxent River, Incorporated is extended only to women. Delta Sigma Theta Sorority, Incorporated is an international sorority and public service organization. The Junior League of Washington; the Society, Incorporated; and the Pearls of the Patuxent River, Incorporated are community service organizations that serve communities located within the Washington, DC metropolitan area. Otherwise, to the best of my knowledge, none of the organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Tax Evasion, Seventh Survey of White Collar Crime, 29 Am. Crim. L. Rev. 609 (1991-1992). Copy supplied.

Letter to the Editor entitled, “No Big Deal,” the Daily Pennsylvanian, November 7, 1989. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If

you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

To the best of my knowledge, I have not prepared or contributed to the preparation of any publicly available reports, memoranda or policy statements.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

September 22, 2008: I provided brief remarks regarding Freedom of Information Act policy and procedure during a meeting of the Board of Regents of the Smithsonian Institution held in Washington, DC. Copy of meeting minutes supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

October 9, 2013: I participated on a conference panel entitled "Privacy Versus Protection," during the CyberMaryland Conference held at the Baltimore Convention Center in Baltimore, Maryland. Notes supplied.

April 18, 2013: I participated on a conference panel entitled "ECPA Reform Panel," during the United States Chamber of Commerce, Telecommunications & E-Commerce Committee's Spring Meeting held in Washington, DC. Notes supplied.

March 16, 2012: I participated on a conference panel regarding the Freedom of Information Act legislative outlook, during a conference held at the American University, Washington College of Law in Washington, DC. Audio and video of the panel is available at: <http://www.c-spanvideo.org/program/AUWa> and at <http://media.wcl.american.edu/Mediasite/Play/23039047-9a32-49e4-a5cf-65c4b6a37bfe>.

March 2, 2012: I participated in a panel discussion entitled "The Legislative Agenda for Technology Policy Issues," during the TechAmerica U.S. Innovation Policy Technology Roundtable held in the Capitol Visitor Center located in

Washington, DC. I discussed potential digital privacy and cybersecurity legislation in the Congress. I have no notes, transcripts or recordings. The address for TechAmerica is 601 Pennsylvania Avenue, NW, #600, Washington, DC 20004.

March 14, 2011: I participated on a conference panel entitled "A Legislative Outlook – an Inside Look at FOIA activity in the 112th Congress," during the Fourth Annual Freedom of Information Day Celebration held at the American University, Washington College of Law in Washington, DC. Notes supplied.

April 8, 2010: I participated in a briefing on federal data breach legislation, held at the Electronic Privacy Information Center. I discussed the legislative outlook for federal data breach notification legislation in the Congress. I have no notes, transcripts or recordings, but press coverage is supplied. The address for the Electronic Privacy Information Center is 1718 Connecticut Avenue, NW, Washington, DC 20009.

January 22, 2010: I participated on a conference panel entitled, "Legislative Staffers and Agency Led Discussion 2010 Top Issues," during a conference sponsored by the Electronic Privacy Information Center in Washington, DC. I discussed the legislative outlook for federal data breach notification and digital privacy legislation in the Congress. I have no notes, transcripts or recordings. The address for the Electronic Privacy Information Center is 1718 Connecticut Avenue, NW, Washington, DC 20009.

January 20, 2010: I participated on a conference panel entitled, "Transparency in the Obama Administration: A First-Year Assessment of the New Office of Government Information Services," during a conference sponsored by the Collaboration on Government Secrecy held at the American University, Washington College of Law in Washington, DC. Audio and video available at: <http://media.wcl.american.edu/Mediasite/Play/9e7a5cd0-c307-4f89-88ae-d74bca4b12b8>.

October 28, 2009: I participated on a conference panel on federal data breach legislation during a policy briefing sponsored by Symantec held in the Hart Senate Office Building located in Washington, DC. I discussed the legislative outlook for federal data privacy legislation in Congress. I have no notes, transcripts or recordings, but press coverage is supplied. The address for Symantec is 350 Ellis Street, Mountain View, California 94093.

January 29, 2009: I participated on a conference panel entitled, "Information Policy in the New Administration," during a conference sponsored by the Collaboration on Government Secrecy and American University's Washington College of Law, held in Washington, DC. Video available at: <http://media.wcl.american.edu/Mediasite/Play/4d44c7ea-4797-42f6-9846-52423ca9fc01>.

December 4, 2008: I participated in a conference panel entitled "Laws in the Works," during the American Society of Access Professionals' 2008 Annual Symposium & Training Conference held at the Walter E. Washington Convention Center located in Washington, DC. Remarks supplied.

March 17, 2008: I participated on a conference panel for the First Annual "Freedom of Information Day" Celebration, during a conference held at the American University, Washington College of Law in Washington, DC. Audio available at: <http://www.podfeed.net/episodes.asp?p=35&id=2749&ct=1>.

July 6 – 7, 2006: I participated in a two-day conference on Internet Drugs during the "Keep Internet Neighborhoods Safe" Conference held at Harvard Law School in Cambridge, Massachusetts. I participated in a policy discussion about the risks to youth associated with the purchase and sale of prescription drugs via the Internet. I have no notes, transcripts or recordings. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

February 23, 2004: I participated in a panel discussion on government employment and the value of a liberal arts education at the University of Pennsylvania in Philadelphia, Pennsylvania. I discussed my professional experiences as an attorney for the Department of Justice. I have no notes, transcripts or recordings, but press coverage is supplied. The address for the University of Pennsylvania is 3451 Walnut Street, Philadelphia, Pennsylvania 19104.

May 17, 1990: I participated on a conference panel entitled, "Student Life Exchanges: The Greek Experience," during the University of Pennsylvania's 250th Celebration, at the University of Pennsylvania in Philadelphia, Pennsylvania. I discussed my experiences as an undergraduate student and member of a university-affiliated sorority. I have no notes, transcripts or recordings. The address for the University of Pennsylvania is 3451 Walnut Street, Philadelphia, Pennsylvania 19104.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Andrew Noyes, *Leahy Plans Hearing to Look at Cybersecurity Cooperation*, Nat'l J.'s Congress Daily, Oct. 29, 2009. Copy previously supplied in response to 12d.

Beverley Lumpkin, *Congress Needs to Learn a Little Openness Itself*, Project on Government Oversight Blog, Mar. 13, 2008. Copy supplied.

E-Government; Definition of 'Media' Was an Obstacle Delaying FOIA Bill, Tech. Daily, Aug. 8, 2007. Copy supplied.

Bill Miller, *Owners of Troubled Properties Targeted; U.S. Suits Seek to Seize Crime-Ridden Buildings*, Wash. Post, July 27, 2000. Copy supplied.

Bill Miller, *Nuisance Law Claims Its First Success; Owners of Troubled Logan Circle Building Promise to Clean It Up*, Wash. Post, June 2, 1999. Copy supplied.

Adam Levine, *After Four-Year Absence, Sorority Chapter Begins Anew on Campus*, the Daily Pennsylvanian, April 16, 1990. Copy supplied.

Adam Levine, "150 Gather for Mandela Rally," the Daily Pennsylvanian, February 15, 1990. Copy supplied.

Su-Lin Cheng, "Greek Leaders Express Support for Proposed Peer Review Panel," the Daily Pennsylvanian, November 2, 1989. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

- i. Of these, approximately what percent were:

jury trials: _____%
bench trials: _____% [total 100%]

civil proceedings: _____%
criminal proceedings: _____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that

were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

- e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Voter Protection Counsel, Obama for America (2012, 2008). I provided pro bono legal advice on election laws and procedures.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a law clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1993 – 1995
DLA Piper, LLP
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209
Associate Attorney

1995 – 1998

United States Department of Justice
Civil Division, Commercial Litigation Branch
950 Pennsylvania Avenue, NW
Washington, DC 20530
Trial Attorney

1998 – 2004

United States Attorney's Office for the District of Columbia
Civil Division
555 Fourth Street, NW
Washington, DC 20530
Assistant United States Attorney

2004 – 2005

United States Senate
Select Committee on Ethics
Suite 220, Hart Senate Office Building
Washington, DC 20510
Counsel

2006 – present

United States Senate
Committee on the Judiciary
Suite 221, Hart Senate Office Building
Washington, DC 20510
Privacy Counsel (2006 – 2008)
Chief Counsel for Privacy and Information Policy (2008 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I began my career in private practice at DLA Piper, LLP. The areas of focus during my tenure with the firm were commercial real estate transactions and banking law. I drafted legal documents for commercial real estate transactions. I researched legal issues related to real estate law

on behalf of clients, conducted title searches, and drafted legal memoranda and correspondence.

In 1995, I was appointed to the position of Trial Attorney for the Civil Division, Commercial Litigation Branch of the Department of Justice. My legal practice changed from commercial transaction work to civil litigation involving monetary claims brought against the United States. From 1995 to 1998, I was the lead counsel in several civil cases litigated in the United States Court of Federal Claims. During that time period, I also occasionally litigated appellate cases before the United States Court of Appeals for the Federal Circuit.

In 1998, I was appointed as an Assistant United States Attorney for the District of Columbia. My legal practice continued to focus on civil litigation. However, my areas of focus changed to include employment discrimination law, matters arising under the Federal Tort Claims Act, the Freedom of Information Act and the Privacy Act. My practice also changed to include affirmative litigation on behalf of the United States. During my tenure at the United States Attorney's Office for the District of Columbia, I served as the Affirmative Civil Enforcement Coordinator for the office and represented the United States in cases brought under the False Claims Act. During my tenure as an Assistant United States Attorney, I litigated numerous cases before the United States District Court for the District of Columbia and litigated several appellate matters before the United States Court of Appeals for the District of Columbia Circuit.

In 2004, I commenced employment with the United States Senate as Counsel for the Select Committee on Ethics. The character of my legal practice changed to providing confidential legal advice and guidance to Members, officers and employees of the Senate regarding the Senate's Code of Conduct and federal ethics law. I investigated ethics complaints and drafted letters and ethics opinions.

In 2006, I commenced employment as Counsel for the United States Senate Committee on the Judiciary. The character of my legal practice changed to providing legal advice on civil law and policy matters related to the Freedom of Information Act, the Privacy Act and the Electronic Communications Privacy Act. In my current position, I draft and negotiate legislation, draft legal memoranda and correspondence, prepare hearing statements and questions and engage in other legislative activities on behalf of the Committee on the Judiciary.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

The clients with whom I worked closely while in private practice were financial institutions, such as Maryland National Bank and GE Capital Corporation. For these clients, I researched legal issues related to real estate law, conducted title searches, and negotiated deeds of trust, contracts of sale and other legal agreements.

During my tenure with the Department of Justice and at the United States Attorney's Office for the District of Columbia, I represented the United States Government in civil litigation.

During my tenure with the Senate Select Committee on Ethics, I represented the members of the Select Committee.

In my current position, I represent the Chairman of the Senate Committee on the Judiciary.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

While in private practice, I did not engage in litigation or appear in court. During my tenure as an employee of the United States Senate, I have not engaged in litigation or appeared in court.

During my tenure as a Trial Attorney with the Department of Justice and Assistant United States Attorney with the U.S. Attorney's Office for the District of Columbia, I frequently appeared in court.

- i. Indicate the percentage of your practice in:

1. federal courts:	100%
2. state courts of record:	0%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	100%
2. criminal proceedings:	0%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

All of the cases in federal district court or the United States Court of Federal Claims in which I participated and which have been tried to final decision were resolved on the court pleadings. Based upon a PACER search, I estimate that I

prepared the court pleadings and briefs in approximately 30 to 40 cases that were resolved on the pleadings.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 0% |
| 2. non-jury: | 100% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Toyota Motor Corporation, No. 99-01888 (D.D.C. July 1, 2003).

This case involved civil claims against Toyota Motor Corporation for Clean Air Act violations involving 2.2 million vehicles manufactured between 1996 and 1998. Following several years of litigation and extensive discovery, the parties resolved the case under a consent decree that required Toyota to, among other things, spend \$20 million on a supplemental environmental project to make its vehicles run cleaner, accelerate compliance with certain emission control requirements, and pay a \$500,000 civil penalty. The United States District Court for the District of Columbia (Judge Henry H. Kennedy, Jr.) approved the consent decree on July 1, 2003.

I began working on the case during the settlement negotiations phase. I worked closely with co-counsel at the Environmental Enforcement Section of the Department of Justice. As counsel of record, I had the primary responsibility for drafting the court pleadings in this case associated with the settlement. The case received significant national attention because of the far-reaching impact of the settlement on so many Toyota vehicles and the positive impact on the environment.

My co-counsels were: Mark A. Gallagher, U.S. Department of Justice, Environmental Enforcement Section, P.O. Box 7611, Washington, DC 20044, 202-514-2701; and John Peter Suarez, former Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, now Vice President and General Counsel, Sam's Club, Department 8352, 608 S.W. Eighth Street, Bentonville, AR 72716, 479-277-7430.

The defendants were represented by: Hamilton Loeb, Paul, Hastings, Janofsky & Walker, LLP, 1299 Pennsylvania Avenue, NW, Tenth Floor, Washington, DC 20004, 202-551-1711.

2. United States v. 57/55 Pound Bags, more or less, of Potato Starch, No. 02-02361 (D.D.C. January 7, 2003).

This case involved a complaint for forfeiture in rem filed under the Federal Food, Drug and Cosmetic Act against articles of contaminated food stored at a Washington, DC food market. At the government's request, the district court issued a warrant for arrest in rem to seize the food. Thereafter, the parties entered into a consent decree condemning the seized food, ordering the owner to pay the cost to destroy the contaminated food and awarding other costs. The United States District Court for the District of Columbia (Judge Ellen S. Huvelle) approved the consent decree on January 7, 2003. Along with counsel for the Food and Drug Administration, I prepared the government's court pleadings in the case, represented the government in court and negotiated and drafted the consent decree. This case received local attention because the litigation eliminated a public health threat at the food establishment.

My co-counsels were: Daniel E. Troy, former Chief Counsel, Food and Drug Administration, U.S. Chamber of Commerce, 1776 K Street, NW, Suite 800, Washington, DC 20006, 202-719-7550; and Michael N. Varrone, Trial Attorney, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-8721.

The defendant was represented by: Simon M. Osnos, Osnos & Associates, LLC, 7700 Leesburg Pike, Suite 434, Falls Church, Virginia 22043, 703-356-8428.

3. James C. Wood, Jr. ex rel. United States v. The American Institute in Taiwan, No. 98-01952, slip op. (February 28, 2001), *aff'd*, 286 F.3d 526 (D.C. Cir. 2002).

This appeal involved a *qui tam* lawsuit brought under the False Claims Act against the American Institute in Taiwan, a unique entity that Congress established in the Taiwan Relations Act to conduct consular services and cultural exchange with the people on Taiwan. The United States declined to intervene in the case and moved to dismiss the case on the grounds that the American Institute enjoyed sovereign immunity from suit under the False Claims Act. In the district court, Judge Colleen Kollar-Kotelly ruled in favor of the government and dismissed the case. On appeal, the United States Court of Appeals for the District of Columbia Circuit (Circuit Judges Tatel, Garland and Williams) affirmed the district court's decision and held that the American Institute in

Taiwan was immune from suit under the doctrine of sovereign immunity. I handled the case at the appellate level, assisting in drafting the government's appellate briefs and the preparation for oral argument.

My co-counsels were: Douglas N. Letter, Appellate Staff Director and Terrorism Litigation Counsel, Civil Division, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, 202-514-2000; and R. Craig Lawrence, Assistant United States Attorney, United States Attorney's Office for the District of Columbia, 555 Fourth Street, NW, Washington, DC 20530, 202-252-7566.

The appellant was represented by: William Paul Lawrence, II, Waters & Krause, LLP, 37163 Mountville Road, Middleburg, Virginia 20117, 540-687-6999; and Bradley S. Weiss, Miner, Barnhill & Galland, PC, 14 West Erie Street, Chicago, Illinois 60610, 312-751-1170.

4. United States v. Borger Management, No. 00-02392 (D.D.C. December 5, 2000) and United States v. Calomiris, No. 00-02391 (D.D.C. December 5, 2000).

These two cases involved the first civil cases litigated under the Residential Lead-Based Paint Hazard Reduction Act. The litigation resulted in consent agreements with two of Washington, DC's largest property management companies at the time, resolving allegations that the landlords violated the lead disclosure law by failing to warn their tenants about lead-based paint hazards in their buildings. The cases were filed in the United States District Court for the District of Columbia as part of a coordinated effort by the Federal Government to eliminate childhood lead poisoning. Under the consent decrees, the landlords agreed to abate lead-based paint hazards in all of their rental units, at an estimated cost of \$500,000, to pay civil penalties and to commit \$10,000 towards support of community-based projects to reduce the incidence of childhood lead poisoning in the District of Columbia. The district court (Judges Royce C. Lamberth and James Robertson) approved the consent decrees on December 5, 2000. I served as counsel of record for the United States in both cases. I prepared the court pleadings in the cases, participated in the settlement negotiations and assisted in the drafting of the consent decrees entered in the cases. The cases received significant local and national attention because they were the first of their kind and served as a model for subsequent lead disclosure litigation in other jurisdictions.

My co-counsels were: John B. Shumway, Attorney, Office of General Counsel, United States Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, 202-708-1112; and Arthur James Parker, Assistant Attorney General, District of Columbia Office of the Attorney General, Suite 450 North, 441 Fourth Street, NW, Washington, DC 20001, 202-727-3400.

The defendants in the Calomiris case were represented by: Harold L. Segall, Beveridge & Diamond, PC, 1350 I Street, NW, Washington, DC 20005, 202-789-6038.

The defendants in the Borger case were represented pro se.

5. McCain v. Reno, 98 F. Supp. 2d 5 (D.D.C. 2000).

This case involved a facial challenge to the constitutionality of the Bureau of Prisons' ("BoP") regulation governing the handling of incoming inmate mail. The plaintiff alleged that the BoP's policy, which permitted prison officials to open mail sent by a state or federal court outside the presence of the inmate, violated the First, Sixth and Fourteenth Amendments. The government argued that the inmate mail policy was related to legitimate penological interests and did not violate plaintiff's constitutional rights. I was responsible for the responsive pleading and motion for summary judgment. The United States District Court for the District of Columbia (Judge Paul Friedman) agreed with the government and rejected plaintiff's constitutional challenges to the regulation. The district court entered summary judgment in favor of the Bureau of Prisons on March 31, 2000.

The plaintiff was represented pro se.

6. Ignatiev v. United States, No. 98-02152, slip op. (D.D.C. November 2, 1999), *aff'd in part, rev'd in part*, 238 F.3d 464 (D.C. Cir. 2001); Mihaylov v. United States, No. 98-02151, slip op. (D.D.C. November 2, 1999) *aff'd in part, rev'd in part*, 238 F.3d 464 (D.C. Cir. 2001).

These two related cases involved a novel Federal Tort Claims Act ("FTCA") claim against the United States Secret Service concerning the discretionary function exception to the FTCA. The plaintiffs-appellants sustained injuries during a robbery that occurred outside of the Chancery of Bulgaria located in Washington, DC. The Secret Service provided protection services for the Chancery and the agency had assigned agents to the Chancery on the night of the attack. Plaintiffs-appellants alleged that, in failing to prevent the robbery, the Secret Service was negligent in performing its duty to protect the Chancery under a duty imposed by the Vienna Convention, the Consular Convention and federal law. The government maintained that the discretionary function exception to the FTCA prohibited the claim.

The United States District Court for the District of Columbia (Judge Henry H. Kennedy, Jr.) agreed with the government's position that the FTCA claim against the Secret Service fell within the discretionary function exception to that law and dismissed the cases. On appeal, the United States Court of Appeals for the District of Columbia Circuit (Circuit Judges Williams, Garland and Silberman) held that plaintiffs-appellants failed to make a valid legal claim under the FTCA based on international and statutory law, but concluded that the district court should have given plaintiffs-appellants the opportunity to conduct discovery of the facts necessary to establish jurisdiction upon other grounds before dismissing the case. On remand, the district court granted the government's motion for summary judgment on May 27, 2005 (Mihaylov v. United States, No. 98-02151, slip op. at 3 (May 27, 2005) and Ignatiev v. United States, No. 02152, slip op. at 3 (May 27, 2005)).

I litigated the cases at the trial and appellate levels from 1998 to 2004 and presented oral argument in the cases on behalf of the United States before the United States District Court for the District of Columbia (Judge Henry H. Kennedy, Jr.) and the United States Court of Appeals for the District of Columbia Circuit (Circuit Judges Williams, Garland and Silberman). The cases resolved an important legal issue regarding the application of the discretionary function exception to decisions about the allocation of law enforcement resources at foreign chanceries and embassies.

My co-counsel was: R. Craig Lawrence, Assistant United States Attorney, United States Attorney's Office for the District of Columbia, 555 Fourth Street, NW, Washington, DC 20530, 202-252-7566.

The plaintiffs-appellants were represented by: Marjorie A. O'Connell, 2055 L Street, NW, Washington, DC 20036, 202-466-8200.

7. United States v. Property Identified as 1421 12th Street, NW, Washington, DC, No. 99-00998 (D.D.C. June 2, 1999).

This case involved the first federal civil lawsuit filed against a drug-related nuisance property in the United States. The defendant apartment building had been a magnet for criminal activity for many years, resulting in more than 100 police calls to the property to respond to assaults, robberies and other crimes. The lawsuit was the first case filed under a law enacted by the District of Columbia City Council authorizing a court to order that a drug-related nuisance property be abated. The case also involved federal civil asset forfeiture claims that allowed the United States to establish federal jurisdiction and to bring the case in the United States District Court for the District of Columbia. The property owners entered into a consent agreement that required that the owners increase security at the property. The district court (Judge Henry H. Kennedy, Jr.) approved the consent decree on June 2, 1999. I was responsible for developing the litigation strategy for this case, preparing the court pleadings in the case and negotiating and drafting the consent decree. I worked closely with co-counsel in the Criminal Division of the United States Attorney's Office and with individuals residing in the local community who were concerned about this property. The case received significant local and national attention because it was the first case of its kind.

My co-counsel in this case was: Barry Wiegand, Assistant United States Attorney, United States Attorney's Office for the District of Columbia, 555 Fourth Street, NW, Washington, DC 20530, 202-252-7566.

The defendant was represented by: Scott A. Fenske, 1920 N Street, NW, #800, Washington, DC 20036, 202-331-8800; and Gary G. Everngam, now Associate Judge, District Court of Maryland, Montgomery County, District Court Building, 191 East Jefferson Street, Rockville, MD 20850, 301-663-8800.

8. Snyder v. Office of Personnel Management, 136 F.3d 1474 (Fed. Cir. 1998).

This appeal involved a challenge to the Office of Personnel Management's ("OPM") regulations requiring that federal retirement annuities be reduced to provide for a survivor annuity for a spouse, if the federal employee is married at the time of retirement. The case presented a unique question regarding how the OPM's regulations should apply when a retiree divorces after separating from federal service and multiple divorce decrees purport to address the distribution of the retirement annuity.

The petitioner in the case sought to eschew payment of the spousal annuity to his former spouse. The petitioner was married at the time of his retirement from federal service but, subsequently, he and his spouse filed separate petitions for divorce in different states. The OPM and the Merit System Protection Board (MSPB) concluded that the first divorce decree granted — a decree obtained by the petitioner's former spouse awarding the former spouse a pro rata share of the petitioner's retirement annuity — should govern the distribution of the petitioner's retirement annuity. The divorce decree specifically addressed the former spouse's entitlement to the annuity and the decree had not been amended, superseded or set aside by the later divorce decree obtained by the petitioner. The petitioner appealed the determination to the United States Court of Appeals for the Federal Circuit. The Court of Appeals (Circuit Judges Newman, Michel and Plager) agreed with the government's position that OPM and the MSPB properly determined that the earlier divorce decree governed the distribution of the petitioner's retirement annuity. The Court also held that the OPM could not properly consider the petitioner's subsequent divorce decree, because the latter decree did not specifically address entitlement to the petitioner's retirement annuity and, therefore, was not acceptable for processing under the OPM's regulations. I prepared the government's appellate briefs in the case.

The petitioner was represented by: William O. Carlisle, 2632 Dade Drive, P.O. Box 54, Running Springs, California 92382, 909-867-2400.

The intervenor was represented by: Edwin C. Schilling, III, 2767 South Parker Road, #230, Aurora, Colorado 80014, 303-755-5121.

My co-counsel was: Sharon Y. Eubanks, former Deputy Director, Civil Division, Commercial Litigation Branch, Department of Justice, Holland & Knight, 2099 Pennsylvania Avenue, NW, Suite 100, Washington, DC 20006, 202-457-7013.

9. Ponder v. United States, No. 95-00695, slip op. (Fed. Cl. November 6, 1996), *aff'd*, 117 F.3d 549 (Fed. Cir. 1997).

This case involved a challenge to the Air Force's policy on military pay for married service members sharing government-supplied base housing and a claim for back pay under the Tucker Act. At the time, the case raised new legal questions regarding how the military should compensate the growing number of married couples jointly serving in the military. Plaintiffs-appellants claimed that Mr. Ponder was entitled to receive a housing

allowance during the period that he shared government-provided base housing with his service member spouse and child. The government argued that federal law prohibited the payment of a housing allowance for service members who are assigned to government-supplied base housing and moved to dismiss the case. The Court of Federal Claims (Judge John Paul Wiese) agreed with the government's position that the plaintiffs-appellants failed to state a claim under the Tucker Act and dismissed the case. On appeal, the United States Court of Appeals for the Federal Circuit (Circuit Judges Newman, Plager and Schall) also agreed with the government's position that the plaintiffs-appellants did not assert a valid claim for back pay under the Tucker Act and affirmed the district court's decision.

I litigated the case at the trial and appellate levels on behalf of the United States and prepared the court pleadings and briefs for the case.

My co-counsel was: Anthony H. Anikeeff, former Assistant Director, Civil Division, Commercial Litigation Branch, Department of Justice, Williams & Mullen, 8300 Greensboro Drive, Suite 1100, Tysons Corner VA 22102, 703-760-5206.

Plaintiffs-appellants were represented pro se.

10. Bryant v. National Science Foundation, 105 F.3d 1414 (Fed. Cir. 1997).

This employment law case involved an appeal of a Merit Systems Protection Board ("MSPB") decision to sustain the removal of an employee from federal service for chronic tardiness. In the appeal, the United States Court of Appeals for the Federal Circuit (Circuit Judges Rich, Clevenger and Bryson) agreed with the government's position that the removal decision was appropriate and did not violate the Family and Medical Leave Act. The court of appeals sustained the MSPB's termination decision.

I prepared the briefs in the case and presented the oral argument on behalf of the United States.

My co-counsel was: Sharon Y. Eubanks, former Deputy Director, Civil Division, Commercial Litigation Branch, Department of Justice, Holland & Knight, 2099 Pennsylvania Avenue, NW, Suite 100, Washington, DC 20006, 202-457-7013.

The petitioner was represented by: Frederic W. Schwartz, Jr., 16341 I Street, NW, Washington, DC 20006, 202-463-0880.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

During my tenure with the Committee on the Judiciary, I have worked on several significant pieces of federal legislation. For example, in 2007, I was the lead Senate counsel for the Open Government Act of 2007, the first major reform to the Freedom of Information Act in more than a decade. President George W. Bush signed this legislation into law on December 31, 2007. In 2009, I served as the lead Senate counsel for the OPEN FOIA Act of 2009, another Freedom of Information Act reform bill. President Barack Obama signed this legislation into law on October 29, 2009.

I have not performed any lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have made no arrangements for deferred income or future benefits to be derived from previous professional or business relationships.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any such plans, commitments, or agreements.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not anticipate any potential conflicts-of-interest. If confirmed, I would review the matters before me and would recuse myself from any matters in which a personal or fiduciary matter might cause others to question my impartiality.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules and practices governing such circumstances. I would conduct myself in a manner that will avoid situations in which my impartiality might be questioned. In any case where I have a question about whether a conflict-of-interest, real or apparent, may exist, I would consult with my colleagues, with counsel for the Court, and/or with the Committee on Code of Conduct of the Administrative Office of the United States Courts.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Most of my legal career has been in government service. As a result, my ability to participate in pro bono activities has been limited. However, in my capacity as an Assistant United States Attorney, I advocated to eradicate drug-related nuisance properties that were harming communities in economically disadvantaged areas of the District of Columbia. I also litigated the first cases brought under the Residential Lead-Based Paint Hazard Reduction Act, which resulted in the lead abatement of several residential buildings located in economically disadvantaged neighborhoods within the District of Columbia.

Since 2008, I have volunteered at a Washington, DC food pantry which provides food to individuals and families in need.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your

jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On November 13, 2013, Senator Patrick Leahy recommended that the President appoint me to the position of Judge, United States Court of Federal Claims. Since early December 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 10, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On April 10, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Griggaby, Lydia K.	2. Court or Organization United States Court of Federal Claims	3. Date of Report 04/10/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Judge, Active Status	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 04/10/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 04/04/2014
7. Chambers or Office Address Hart Senate Office Building Suite 221 Washington, DC 20510		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1.	
2.	
3.	
4.	
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT

Page 2 of 6

Name of Person Reporting	Date of Report
Griggaby, Lydia K.	04/10/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.		
2.		
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.
(Dollar amount not required except for honoraria.)*☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS *-- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
 Page 3 of 6

Name of Person Reporting	Date of Report
Griggaby, Lydia K.	04/10/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	American Education Services	Student Loan (1994)	K
2.	American Education Services	Student Loan (2000)	K
3.	Justice Federal Credit Union	Credit Card	J
4.			
5.			

FINANCIAL DISCLOSURE REPORT

Page 4 of 6

Name of Person Reporting	Date of Report
Griggsby, Lydia K.	04/10/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Rental Property (Mount Olive, NC)	C	Rent	K	W					
2. M & T Bank Cash Accounts	A	Interest	J	W					
3. Citibank Cash Accounts		None	J	W					
4. Justice Federal Credit Union Cash Account		None	J	W					
5. Senate Federal Credit Union	A	Interest	J	W					
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

FINANCIAL DISCLOSURE REPORT
Page 5 of 6

Name of Person Reporting	Date of Report
Griggsby, Lydia K.	04/10/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT
Page 6 of 6

Name of Person Reporting	Date of Report
Griggsby, Lydia K.	04/10/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ Lydia K. Griggsby

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		10	990	Notes payable to banks-secured (auto)		20	000
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:		5	400	Accounts and bills due		21	272
Due from relatives and friends		58	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		421	000
Real estate owned – see schedule		596	470	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000	Education loans		74	027
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		356	626				
				Total liabilities		536	299
				Net Worth		541	187
Total Assets	1	077	486	Total liabilities and net worth	1	077	486
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>Real Estate Owned</u>	
Personal residence	\$ 555,000
Rental property	36,470
Undeveloped lot	5,000
Total Real Estate Owned	<u>\$ 596,470</u>

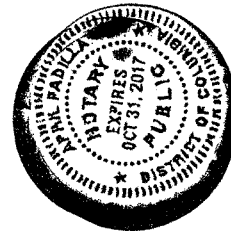
AFFIDAVIT

I, Lydia Kay GRIGGSBY, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

April 11, 2014
(DATE)

Lydia Kay Griggsby
(NAME)

Amir D Padilla
(NOTARY)



UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Thomas Lee Halkowski

2. **Position:** State the position for which you have been nominated.

Judge, United States Court of Federal Claims

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Fish & Richardson
222 Delaware Avenue
Wilmington, DE 19899

I reside in Kennett Square, Pennsylvania.

4. **Birthplace:** State year and place of birth.

1962; Milwaukee, Wisconsin

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1987 – 1989, University of Wisconsin Law School; J.D. (*cum laude*), 1989
1986 – 1987, Marquette University Law School; no degree
1985 – 1986, University of Florida; M.S. in engineering, 1986
1981 – 1985, Marquette University; B.S. (*cum laude*), 1985
1980 – 1981, Carroll College; no degree

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2000 – Present
Fish & Richardson P.C.
222 Delaware Avenue
Wilmington, DE 19899
Principal

1992 – 2000
United States Department of Justice
Environment & Natural Resources Division, General Litigation Section
601 D Street, NW
Washington, D.C. 20049
Trial Attorney

1990 – 1992
The Honorable Helen W. Nies, Chief Judge (now deceased)
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington D.C. 20439
Law Clerk

1989 – 1990
The Honorable Roger B. Andewelt (now deceased)
United States Court of Federal Claims
717 Madison Place, NW
Washington, D.C. 20439
Law Clerk

Spring Semester 1989
Wisconsin Department of Agriculture, Trade & Consumer Protection
801 West Badger Road
Madison, WI 53708
Legal Research Consultant

Fall Semester 1988
The Honorable Donald W. Steinmetz
Wisconsin Supreme Court
Two East Main Street
Madison, WI 53702
Judicial Intern

Summer 1988
Faegre & Benson (now Faegre Baker Daniels)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Summer Associate

Spring Semester 1988
 Professor Emeritus Frank Tuerkheimer
 University of Wisconsin Law School
 975 Bascom Mall
 Madison, WI 53706
 Editorial Assistant

Summer 1987
 Jenswold, Studt, Hanson, Clark & Kaufmann
 16 North Carroll Street, Suite 900
 Madison, WI 53703
 Law Clerk

Spring Semester 1987
 Assistant Professor Jean Thompson
 Marquette University Law School
 1215 West Michigan Street
 Milwaukee, WI 53233
 Research Assistant

1985 – 1986
 University of Florida, School of Engineering
 237 Mechanical Engineering Building
 Gainesville, FL 32611
 Teaching Assistant (Graduate Advisor: Professor H.A. Ingley)

Other Affiliations (uncompensated):

2006 – 2009
 Greenwoods Club
 Nine Maple Lane
 Chadds Ford, PA 19317
 Board of Directors (2006 – 2009)
 Director of Pool & Grounds (2006 – 2007)
 Vice-President (2008 – 2009)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have timely registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other

special recognition for outstanding service or achievement.

Certificate of Appreciation for pro bono activities from the Federal Circuit Bar Association (2011)

Order of the Coif, University of Wisconsin Law School (1989)

West Hornbook & Duane Mowry Award (Highest Second Year Average), University of Wisconsin Law School (1988)

Am Jur Awards (Antitrust, Administrative Law), University of Wisconsin Law School (1988)

Entering Law Student Merit Scholarship, Marquette University Law School (1986)

Woolsack Merit Law Scholar, Marquette University Law School (1986)

Thomas Moore Scholarship, Marquette University Law School (1986)

Scholastic Honors Award in Energy Engineering, Marquette University (1985)

Polanki College Achievement Award, Polish Women's Cultural Club (1983)

Pi Tau Sigma (Engineering Honorary), Marquette University (1982)

Phi Eta Sigma (Frosh Honorary), Carroll College (1981)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Delaware State Bar Association
 Secretary of IP Section (2005 – 2007)
 Vice Chair IP Section (2008 – 2010)

District of Columbia Court of Appeals Bar Association

Federal Bar Association

Federal Circuit Bar Association
 Co-Chair, Environment & Natural Resources Committee (1994 – 1996)

Pennsylvania State Bar Association

United States Patent & Trademark Office

Wisconsin State Bar Association

10. Bar and Court Admission:

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Delaware, 2001
District of Columbia, 2001
Pennsylvania, 2002
Wisconsin, 1989

I no longer litigate matters in the District of Columbia, Pennsylvania, or Wisconsin; and my bar membership for each of those jurisdictions has lapsed due to nonpayment of dues and/or lack of reporting continuing legal education credits.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the Eastern District of Wisconsin, 2010
United States District Court for Eastern District of Pennsylvania, 2004
Pennsylvania Supreme Court, 2002
United States Patent and Trademark Office, 2001
Delaware Supreme Court, 2001
United States Bankruptcy Court District of Delaware, 2001
United States District Court for the District of Delaware, 2001
United States Court of Appeals for the Federal Circuit, 1992
United States Court of Federal Claims, 1990
Wisconsin Supreme Court, 1989

I no longer practice in any court in either Pennsylvania or Wisconsin and, with the exception of the U.S. District Court for the Eastern District of Wisconsin (where I was admitted to practice in 2010 based upon, *inter alia*, my membership and good standing in the Delaware bar), I am no longer admitted to practice in courts in those two states due to the lapse of my membership in the bars for those states.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Greenwood Pool Club (2002 – present)
 Board of Directors (2006 – 2009)
 Director of Pool & Grounds (2006 – 2007)
 Vice-President (2008 – 2009)

Knights of Columbus (1998 – 2000)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Knights of Columbus is a Catholic fraternal service organization. From approximately 1998 to 2000, I was a member of the organization in Arlington, Virginia, which operated a pool and swim team where my family and I were members. I am aware of at least two sister organizations to the Knights of Columbus, known as the Catholic Daughters of the Americas and the Columbiettes. To my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

"Can You Keep a Secret?," Technology Times, published by the Eastern Technology Council (co-authored with Tara Elliot), October 2006. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

To the best of my knowledge, I have not prepared or contributed to the

preparation of any such publicly available reports, memoranda, or policy statements.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

To the best of my knowledge, I have not issued or provided any such testimony, official statements, or other communications.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

To answer this question, I have searched my files and papers and conducted an Internet search for responsive materials and information. I have tried to compile a complete a list as possible, but it is possible that there were speaking engagements and conferences in which I participated but for which I have not retained any records and I am not able to remember or identify.

June 3, 2010: I discussed trade secret issues at the Thomson Reuters webcast, "Trade Secret Litigation in Delaware," in Wilmington, DE. PowerPoint supplied.

May 20, 2010: I discussed writing appellate briefs at the National Business Institute, "Successfully Navigating the Appeals Process," in Newark, DE. PowerPoint supplied.

December 10, 2009: I discussed various issues concerning depositions as well as ethical considerations in litigation at the National Business Institute seminar, "The Art of Depositions: Powerful Techniques to Maximize Your Success," in Newark, DE. They were entitled, "Looking Ahead – How to Use Deposition Testimony in the Case" and "Ethical Considerations." Audio recording supplied.

2007 – 2008: I was a volunteer judge for the Delaware High School Mock Trial Competition in Wilmington, DE. I have no notes, transcript or recording. The address of the Delaware Law Related Education Center, Inc. is 405 North King Street, Suite 100C, Wilmington DE 19801.

June 22, 2007: I discussed discovery procedures at the National Business

Institute seminar, "Effective Federal Pre-Trial Practice," in Wilmington, DE. Notes supplied.

May 25, 2006: I discussed rules of procedure at the National Business Institute seminar, "Rules and Procedures for Federal Court Success," in Wilmington, DE. Notes supplied.

December 7, 2005: I discussed expert witnesses at the Law Seminars International program, "Pre and Early Stage Patent Litigation," in Philadelphia, PA. PowerPoint supplied.

November 15, 2005: I served as a panelist discussing intellectual property issues related to operating a business at a breakfast seminar sponsored by the Greater Philadelphia Chamber of Commerce in Wilmington, DE. Summary of panel questions supplied.

September 8, 2004: I discussed trademarks and copyrights at a Delaware Biotech Institute seminar, "Commercializing Innovation," in Wilmington, DE. PowerPoint supplied.

August 26, 2004: I spoke at the National Business Institute seminar, "Effective Federal Pre Trial Practice for Attorneys," in Philadelphia, PA. Notes supplied.

October 1, 2003: I spoke at the Regional Business and Financial Resources for Technology Companies, sponsored by the Northeastern Maryland Technology Council Hartford County Office of Economic Development Small Business Development Center of Hartford County near Aberdeen, MD. PowerPoint supplied.

February 11, 2003: I spoke at the National Business Institute seminar, "Effective Federal Pre Trial Practice for Attorneys," in Philadelphia, PA. I gave two presentations, entitled "Discovery Techniques and Strategies" and "Ethical Considerations." I discussed various issues concerning discovery in federal cases, including ethical considerations. I have no notes, transcript or recording. The address for the National Business Institute is P.O. Box 3067, Eau Claire, WI 54702.

October 28-29, 1999: I discussed takings issues at the Second Annual Conference on Litigating Regulatory Takings Claims, at Georgetown University Law Center in Washington, D.C. I discussed legal issues regarding takings claims under the Fifth Amendment of the U.S. Constitution. I have no notes, transcript or recording. The address for the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, D.C. 20001.

April 9-10, 1996: I discussed takings issues at the Federal Circuit Bar Association Conference in Boston, MA. During my presentation, I discussed

developments in the law of takings claims under the Fifth Amendment of the U.S. Constitution. I have no notes, transcript or recording. The address for the Federal Circuit Bar Association is 1620 I Street, NW, Suite 801, Washington, D.C. 20006.

1995 and 1996: I introduced speakers as Program Chair for Environment & Natural Resources Sessions of the Federal Circuit Bar Association's Tenth and Eleventh Annual Meetings and CLE Programs, in Washington, D.C. I have no notes, transcript or recording. The address for the Federal Circuit Bar Association is 1620 I Street, NW, Suite 801, Washington, D.C. 20006.

In the 1990s, I was a volunteer judge in the Giles Rich Moot Court competition in Washington, D.C. sponsored by the American Intellectual Property Law Association (AIPLA). I have no notes, transcript or recording. The address of the AIPLA is 241 18th Street South, Suite 700, Arlington, VA 22202.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

April 23, 2009: Press Release, "Fish and the U.S. Department of Justice Settle Medicaid Fraud and Abuse Case at Southwood Psychiatric Hospital in Pennsylvania," Fish & Richardson P.C. Copy supplied.

February 28, 2008: Don Beideman, "Medals in the Mail," Philly.com (included as part of an article titled, "Malvern Duo Has High Hopes for State Indoor Meet"). Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
- i. Of these, approximately what percent were:
- | | |
|-----------------------|---------------------|
| jury trials: | _____% |
| bench trials: | _____% [total 100%] |
| civil proceedings: | _____% |
| criminal proceedings: | _____% [total 100%] |
- b. Provide citations for all opinions you have written, including concurrences and dissents.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;

- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

In 1983, while I was an undergraduate engineering student at Marquette University, I was unsuccessful in my candidacy to win the public election for a seat on the St. Francis School Board for the St. Francis, Wisconsin school district.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a position in, or rendered services to, a political party or election committee. Other than my campaign for election to the St. Francis School Board in 1983, I have not held a position or played a role in a political campaign.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1989 to 1990, I served as law clerk to the Honorable Roger B. Andewelt, United States Court of Federal Claims.

From 1990 to 1992, I served as law clerk to the Honorable Helen W. Nies, Chief Judge of the United States Court of Appeals for the Federal Circuit.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1992 – 2000
U.S. Department of Justice
Environment & Natural Resources Division
General Litigation Section
601 D Street, NW
Washington, D.C. 20049
Trial Attorney

2000 – present
Fish & Richardson, P.C.
222 Delaware Avenue
Wilmington, DE 19899
Principal

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I served as an arbitrator in *Daniel Shaw v Nationwide Insurance et al.*, Del. CCP – C.A. No. 2007-09-609 during 2008 to 2009. I briefly worked with the parties in an effort to resolve their dispute concerning insurance coverage. I understand that this matter was referred to me as part of the Delaware State Bar program of having more senior members of the bar serve as arbitrators on randomly selected matters.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

After completing two clerkships for federal judges, I began my law practice in 1992 as a trial attorney at the U.S. Department of Justice. While at the Justice Department I was a trial attorney for numerous cases litigated in the United States Court of Federal Claims, including many cases where plaintiffs sought compensation under the Fifth Amendment for the alleged uncompensated taking of property. I managed my cases from filing through judgment, including developing strategy, conducting discovery, as well as presenting evidence and argument at trial.

In 2000, I accepted a position as a principal at Fish & Richardson. Since that time, I have primarily worked on patent litigation regarding a variety

of technologies. I have managed cases on the offensive and defensive sides from filing through judgment, including working with a team of attorneys to present evidence and argument at multiple jury trials.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my work at the Justice Department, my client was the United States. I worked with a number of government agencies, including the U.S. Army Corps of Engineers and the U.S. Department of the Interior. The vast majority of my cases were litigated in the U.S. Court of Federal Claims.

During my work at Fish & Richardson P.C., my clients have typically been companies who develop cutting-edge technology in a variety of areas, including biomedical devices, smart phones, software, and computer chips (e.g., Kyphon, Cypress Semiconductor, Acronis, Callaway Golf and LG). I have litigated cases in a variety of federal district courts, including Delaware, Massachusetts, Tennessee, California, and Alabama. The vast majority of my cases have concerned patent litigation.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Approximately 90% of my practice has been litigating matters. The remainder has concerned client consultation regarding a variety of legal issues, including licensing issues and appearing on behalf of clients in the U.S. Patent and Trademark Office. As part my litigation experience, I have appeared in court on a regular basis throughout my career.

- i. Indicate the percentage of your practice in:

1. federal courts:	90%
2. state courts of record:	1%
3. other courts:	0%
4. administrative agencies:	9%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	100%
2. criminal proceedings:	0%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While with the Justice Department, I worked on nearly 40 cases. The vast majority of these cases were the subject of significant litigation, typically years of work. At least four of these cases were litigated all the way through to a trial on the merits; many others were resolved on motions to dismiss or for summary judgment and at least one included an extensive hearing on a motion for injunctive relief. With one or two exceptions, I was lead counsel for each of these cases.

While with Fish & Richardson P.C., I have worked on nearly 100 cases. The majority of these cases were the subject of significant litigation. My litigation of these cases has included over a dozen trials and extensive evidentiary hearings regarding motions for preliminary injunctive relief. Many other matters were resolved after rulings on a variety of dispositive motions. I was responsible for day-to-day management of the cases and/or assisting with strategic development of the case. At trial, I typically worked as part of a team of attorneys and lead counsel to present the cases to a jury.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 67 % |
| 2. non-jury: | 33 % |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

Callaway Golf v. Acushnet, 576 F.3d 1331 (Fed. Cir. 2009), *cert. denied* 559 U.S. 939 (2010) (opposition to petition for certiorari, 2010 WL 271318)

Plantation Landing Resort, Inc. v. United States, 30 Fed. Cl. 63 (1993), *aff'd*, 39 F.3d 1197 (Fed. Cir. 1994), *cert. denied*, 514 U.S. 1095 (1995) (opposition to petition for certiorari, 1995 WL 17048945)

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and

- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- 1. *Plantation Landing Resort, Inc. v. United States*, 30 Fed. Cl. 63 (1993), *aff'd*, 39 F.3d 1197 (Fed. Cir. 1994), *cert. denied*, 514 U.S. 1095 (1995).

This case concerned the alleged taking of property in Louisiana due to the existence of certain regulations and agency decisions regarding development of wetlands. This was one of my first cases when I arrived at the Justice Department. I was the lead attorney and, among other things, developed the evidentiary record, assessed strategy, and worked with the Army Corps of Engineers. I proceeded to draft, file and present argument in support of our motion for summary judgment that ultimately disposed of this matter. Judge Tidwell granted summary judgment in favor of the United States, concluding that the denial of a permit to fill certain wetland areas did not constitute a taking of property without payment of just compensation.

Opposing counsel was Lawrence Wiedemann (Wiedemann Law Firm, 1100 Veterans Boulevard, Suite 444, New Orleans, LA 70113; 504-581-6180).

- 2. *Kelly, et al. v. United States*, No. 1:93-CV-128 (Fed. Cl. June 18, 1998).

This case concerned the alleged taking of property in West Virginia due to the existence of certain regulations and agency decisions regarding the mining of coal. I handled this case as lead attorney from the outset of its filing in 1993 through trial on the merits in June of 1998 in West Virginia, including conducting discovery, presenting argument to the court, and presenting our witnesses and cross-examining the opposition's witnesses at trial. This case presented a variety of challenges in discovering and presenting the history of coal-mining over the course of many decades in West Virginia. After presiding over a trial in West Virginia, Judge Harkins granted judgment in favor of the United States and dismissed the case.

Opposing counsel was George A. Barton (Law Offices of George A. Barton PC, 4435 Main Street, Suite 920, One Main Plaza, Kansas City, MO 64111; 816-300-6250).

- 3. *Heck v. United States*, 37 Fed. Cl. 245 (Fed. Cl. 1997), *aff'd*, 134 F.3d 1468 (Fed. Cir. 1998).

This case concerned the alleged taking of property in New Jersey due to the existence of certain regulations and agency decisions regarding development of wetlands. I was the lead attorney responsible for this case from the outset, including working with the client agency, drafting the briefing, and arguing the motion to dismiss at the trial court level. Judge Wiese granted the United States' motion for lack of jurisdiction, finding that the matter was not ripe for

adjudication. I also handled the case on appeal. The Federal Circuit Court of Appeals, after argument, affirmed the trial court's decision in an opinion authored by Judge Michel. Together, the district court and appellate court decisions provided additional clarity in this important area of the law.

Co-Counsel at the U.S. Army Corps of Engineers (Philadelphia District) was Barry Gale (now retired) (P.O. Box 56, Poyntelle, PA 18454; 570-448-2300).

Opposing counsel was Kevin Coakley (Connell Foley LLP, 85 Livingston Avenue, Roseland, NJ 07068; 973-535-0500).

4. *Walcek v. United States*, 49 Fed. Cl. 248 (Fed. Cl. 2001), *aff'd*, 303 F.3d 1349 (Fed. Cir. 2002) (rehearing and rehearing en banc denied December 9, 2002).

This case concerned the alleged taking of property in Delaware due to the existence of certain regulations and agency decisions regarding development of wetlands. I took over as lead attorney and completed discovery as well as prepared the case for trial – including presenting our witnesses and cross-examining the witnesses from the opposition at trial in Delaware. Ultimately, Judge Allegra granted judgment in favor of the United States and dismissed the complaint along with all its claims. This case provided additional guidance as to when a diminution in value crosses the line and becomes a taking of property without payment of just compensation.

Co-Counsel at the U.S. Army Corps of Engineers (Philadelphia District) was Barry Gale (now retired) (P.O. Box 56, Poyntelle, PA 18454; 570-448-2300).

Opposing counsel was Stanley Walcek (P.O. Box 557, Bethany Beach, DE 19930-0557; 302-539-3259).

5. *ADE Corp. v. KLA-Tencor Corp.*, 220 F.Supp. 2d 303 (D. Del. 2002), *vacated in part*, No. Civ.A.00-892 (MPT), 2002 WL 31933046 (D. Del. Dec. 10, 2002); 252 F.Supp. 2d 40 (D. Del. 2003); 288 F.Supp. 2d 590 (D. Del. 2003), *appeal dismissed*, 122 Fed.Appx. 518 (Fed. Cir. 2005).

This case concerned two competitors who each asserted patent infringement claims against one another that related to semiconductor manufacturing processes and equipment. We represented ADE Corporation (ADE). Initially I joined this case to work on a few issues, including assertions that attorneys at Fish & Richardson had allegedly committed inequitable conduct while seeking issuance of patents for ADE. After marshaling the evidence and law, I drafted and argued a summary judgment motion that was granted by Judge McKelvie disposing of these issues. Later I became responsible for managing the case. Over the course of this matter, multiple decisions were issued by Judge McKelvie, Magistrate Judge Thyng, and Judge Jordan, *inter alia*, dismissing certain claims but leaving others for trial. I assisted in developing strategy and presenting evidence and

argument at trial along with our team and lead counsel. We received a verdict from the jury in our favor that fully disposed of the claims asserted at trial against our client ADE.

Co-counsel included Howard Pollack (Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, CA 94063; 650-839-5007) and Robert Hillman (Fish & Richardson P.C., One Marina Park Drive, Boston, MA 02210-1878; 617-521-7816); and lead counsel was Juanita Brooks (Fish & Richardson P.C., 12390 El Camino Real, San Diego, CA 92130; 858-678-4377).

Opposing counsel included Patricia Smink Rogowski (Novak Druce Connolly Bove + Quigg, 1007 North Orange Street, Ninth Floor, Wilmington, DE 19801; 302-888-6201) and David C. Bohrer (Confluence Law Partners, 60 South Market Street, Suite 1400, San Jose, CA 95113; 408-938-3883).

6. *Sandhu v. Medtronic Sofamar Danek, Inc.*, No. 2:05-CV-02863 (W.D. Tenn.) (filed Nov. 9, 2007).

This case primarily concerned assertions by our client, Kyphon, that competitors were infringing on its patents that covered devices and methods for treating vertebral compression fractures that can lead to a debilitating condition known as kyphosis of the spine. I was responsible for managing this case, including supervising fact and expert discovery, as well as working with our team and lead counsel for this matter to present argument and evidence at a preliminary injunction hearing in the case against Medtronic. Decisions were rendered in this case on a variety of issues by Magistrate Judge Vescovo and Judge McCalla. After an extensive evidentiary hearing on our motion for a preliminary injunction, the case against Medtronic was ultimately resolved via Medtronic's acquisition of Kyphon. Prior to the case against Medtronic, I managed a related case involving assertion of the Kyphon patents against another company that was resolved by a jury verdict in favor of our client, Kyphon. *See Kyphon, Inc. v. Disc-O-Tech Med. Techs. Ltd.*, No. Civ.A.04-204 JJF, 2004 WL 2898064 (D. Del. Dec. 10, 2005); 2005 WL 6225191 (D. Del. May 16, 2005).

Our lead counsel was Frank E. Scherkenbach (Fish & Richardson P.C., One Marina Park Drive, Boston, MA 02210-1878; 617-521-7883).

Kyphon's general counsel was, during the relevant time period: David M. Shaw (P.O. Box 370043, Montara, CA, 94037; 408-390-8329).

Opposing counsel included: Fred I. Williams (Akin Gump, 300 West 6th Street, Suite 1900, Austin, TX 78701-3911; 512-499-6218).

7. *Honeywell Int'l, Inc. v. Universal Avionics Sys. Corp. and Sandel Avionics, Inc.*, 288 F.Supp. 2d 638 (D. Del. 2003); 289 F.Supp. 2d 493 (D. Del. 2003); 343 F.Supp. 2d 272 (D. Del. 2004), *aff'd*, 488 F.3d 982 (Fed. Cir. 2007), *on remand*,

585 F.Supp. 2d 623 (D. Del. 2008); 347 F.Supp. 2d 81 (D. Del. 2004) (construing US Patent 4,914,436), *ruling infringed* 426 F.Supp. 2d 211 (D. Del. 2006), *aff'd*, 493 F.3d 1358 (Fed. Cir. 2007); 347 F.Supp. 2d 114, 121, 124, 129 (D. Del. 2004); 398 F.Supp. 2d 305 (D. Del. 2005).

This dispute concerned assertions that our client, a small developer and manufacturer of avionics instruments, Sandel, infringed multiple patents of Honeywell. Sandel had developed an innovative terrain awareness and warning system. I assisted in development of case strategy with lead counsel, worked with our team on various discovery efforts, as well as assisted in the presentation of argument and evidence at multiple hearings and trials in this matter. The parties stipulated to this matter being assigned to Magistrate Judge Thyne who issued multiple written decisions on a variety of issues in this case. After numerous motions, arguments, a bench trial, and two jury trials, our client Sandel's positions were vindicated and ultimately all claims against Sandel were rejected via a variety of decisions – including favorable jury verdicts.

Lead counsel for our client Sandel were Frank E. Scherkenbach (Fish & Richardson P.C., One Marina Park Drive, Boston, MA 02210-1878; 617-521-7883) and Howard Pollack (Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, CA 94063; 650-839-5007).

Opposing counsel included Steven D. McCormick (Kirkland & Ellis, 300 North LaSalle, Chicago, IL 60654; 312-862-2246).

8. *iRobot Corp. v. Ahed*, No. 1:07-CV-11611 (D. Mass. Nov. 2, 2007); *iRobot Corp. v. Robotic FX, Inc.*, No. 2:07-CV-01511 (N.D. Ala. Sept. 10, 2007).

This dispute concerned assertions by our client, iRobot, that its intellectual property had been unlawfully taken by Mr. Ahed (a former employee of iRobot) and Mr. Ahed's company, Robotic Fx. iRobot has developed a number of innovative products, including its PackBot which performs bomb disposal and other dangerous missions for military troops and first responders. iRobot filed suit in Massachusetts seeking a preliminary injunction for the unlawful taking of certain trade secrets by Mr. Ahed, and then filed suit in Alabama seeking damages for infringement of certain patent claims by Mr. Ahed's company, Robotic Fx. I was responsible for managing these cases, including supervising all aspects of discovery, as well as working with our team and lead counsel for this matter to present argument and evidence at various hearings – including a preliminary injunction hearing conducted in the federal court in Massachusetts. Judge Armstrong and Judge Clemon in Alabama, and Judge Gertner in Massachusetts addressed a variety of issues regarding these cases. After we secured issuance of a preliminary injunction, the dispute was resolved via a settlement.

Lead counsel for our client, iRobot, was Ruffin Cordell (1425 K Street, NW, 11th Floor, Washington, D.C. 20005; 202-626-6449).

Opposing counsel included Patricia Kane Schmidt (Corporate Technology at Siemens Corporation (Lead Counsel), 755 College Road East, Princeton, NJ 08540-6632; 609-734-3663).

9. *Commonwealth Research Grp. LLC v. Lattice Semiconductor Corp.*, Civil Action No. 11-655-RGA, 2012 WL 2501107 (D. Del. June 28, 2012).

This case concerned claims by Commonwealth Research Group (CRG) that our client, Cypress, allegedly infringed certain claims of a patent concerning approaches for conserving energy among electrical components. Cypress manufactures a variety of semiconductor chips, including certain Programmable System-on-Chips (PSoCs) that were accused of infringing CRG's patent. I was principally responsible for handling this case from the outset. After we had presented our arguments to the Court as to why the asserted patent, when properly interpreted, was invalid, CRG dropped its claims against our client Cypress.

Co-Counsel in the case was Thomas Manuel (Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, CA 94063; 650-839-5070).

Cypress's general counsel is Victoria Valenzuela (Cypress Semiconductor Corporation, 198 Champion Court, San Jose, CA 95134; 408-943-2979).

Opposing counsel included Daniel Kotchen (Kotchen & Low LLP, 1745 Kalorama Road NW, Suite 101, Washington, D.C. 20009; 202-468-4014).

10. *SRI Int'l Inc. v. Internet Security Sys., Inc. and Symantec Corp.*, 572 F.Supp. 2d 511 (D. Del. 2008), *on remand from* 511 F.3d 1186 (Fed. Cir. 2008); 647 F.Supp. 2d 323 (D. Del. 2009) (ruling not infringed), *aff'd*, 401 Fed.Appx. 530 (Fed. Cir. 2010); 817 F.Supp. 2d 418 (D. Del. 2011); 852 F.Supp. 2d 529 (D. Del. 2012).

This case concerned assertions by our client, SRI, that Symantec and others were infringing on its patents relating to monitoring and surveillance of computer networks for intrusion detection. I assisted in development of case strategy with lead counsel and our team, worked on various discovery efforts and assisted with two successful appeals of various issues to the U.S. Court of Appeals for the Federal Circuit, and assisted in the presentation of argument and evidence at multiple hearings and a jury trial in this matter. Judge Robinson as well as Judge Dyk (as authoring judge on the panel that adjudicated an appeal), addressed a variety of issues during the litigation of this matter concerning the alleged infringement of SRI's patents. Ultimately, after we obtained a favorable jury verdict on the merits against Symantec, a settlement was reached to finally resolve this matter.

Our lead counsel was Frank E. Scherkenbach (Fish & Richardson P.C., One Marina Park Drive, Boston, MA 02210-1878; 617-521-7883) and co-counsel

included Howard Pollack (Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, CA 94063; 650-839-5007).

Opposing counsel included Geoff Godfrey (Wilmer Cutler Pickering Hale & Dorr LLP, 950 Page Mill Road, Palo Alto, CA 94304; 650-858-6082) and Robert Galvin (Wilmer Cutler Pickering Hale & Dorr LLP, 950 Page Mill Road, Palo Alto, CA 94304; 650-858-6017).

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The vast majority of my work at the Justice Department and Fish & Richardson P.C. has been concerned with litigating matters in federal court or representing clients at administrative agencies. While at Fish & Richardson P.C., I have occasionally provided confidential consultation regarding licensing issues with a variety of clients. I have not performed lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am not aware of any such deferred income or future benefits.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any such plans, commitments, or agreements.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries,

fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Financial Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If I am confirmed to the United States Court of Federal Claims, it is possible specific matters on which I worked could come before the Court. If this were to occur, I would recuse myself from such cases.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will conduct myself in a manner that will avoid situations in which my impartiality might be questioned. I will recuse myself from sitting on any cases in which my personal, financial, or fiduciary matters might cause others to question my impartiality. In any case where I would have a question of whether a conflict, real or apparent, exists, I would conduct myself in accordance with the relevant standards of judicial conduct, including the Code of Conduct for United States Judges. If necessary, I would consult with my colleagues, with counsel for the Court, and/or with the Committee on Codes of Conduct of the Administrative Office of the U.S. Courts.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

From approximately 2003 to 2007, I served as the pro bono liaison for Fish & Richardson's Delaware office and was responsible for encouraging pro bono work by attorneys in that office. I also have participated in the Federal Circuit Bar Association's Veteran's Pro Bono program, which involved review of case materials in order to provide a preliminary opinion regarding the merits of a possible claim and for which I received a

Certification of Appreciation from the Federal Circuit Bar Association on June 24, 2011.

In addition to participating in pro bono legal services, I also have served the community in other ways. During the early 1990s, I was a Keyworker for the Combined Federal Campaign. During the 1990s, I also was a volunteer waiter at Knights of Columbus' functions that raised money used for a variety of charitable purposes. From 2006 to 2009, I served as a volunteer member of the board of directors for Greenwoods Club, a local swimming pool. I have served as a volunteer judge in moot court competitions in the early 1990s and in 2007 and 2008.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In March 2013, I wrote a letter to an official in the White House Counsel's Office, expressing my interest in serving on the U.S. Court of Federal Claims. In early September 2013, I further discussed my interest with an official from the White House Counsel's Office. Since September 6, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 8, 2013, I met with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On April 10, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Halkowski, Thomas L.	2. Court or Organization United States Court of Federal Claims	3. Date of Report 4/10/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 4/10/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final Sub. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2013 to 3/31/2014
7. Chambers or Office Address Fish & Richardson 222 Delaware Avenue Wilmington, DE 19899		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Principal	Fish & Richardson, P.C.
2.	
3.	
4.	
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Halkowski, Thomas L.	4/10/2014

III. NON-INVESTMENT INCOME, (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

A. Filer's Non-Investment Income
☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2014	Fish & Richardson, P.C. - Gross Wages	\$75,514.20
2. 2013	Fish & Richardson, P.C. - Gross Wages	\$584,582.00
3. 2012	Fish & Richardson, P.C. - Gross Wages	\$645,594.00
4.		

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, complete this section.
 (Dollar amount not required except for honoraria.)

☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2013	One_Yoga - wages
2. 2013	YMCA of Brandywine Valley - wages
3. 2013	Salon Secrets - wages
4. 2013	self-employed consultant - wages
5. 2014	YMCA of Brandywine Valley - wages
6. 2014	Salon Secrets - wages

IV. REIMBURSEMENTS - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE (No reportable reimbursements.)

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Halkowski, Thomas L.	4/10/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Halkowski, Thomas L.	4/10/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-49 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Fish & Richardson; Capital Account		None	M	T					
2. Fish & Richardson; Employee Cash Balance Plan	E	Int./Div.	O	T					
3. Schwab S&P 500 Index Fund	E	Int./Div.	P1	T					
4. PNC Accounts	A	Interest	L	T					
5. Citizen Bank Accounts	B	Interest	N	T					
6. M&T Accounts	A	Interest	L	T					
7. American Funds American Balanced Fund	A	Int./Div.	K	T					
8. American Funds Capital World Growth and Income Fund	A	Int./Div.	J	T					
9. American Funds The Growth Fund of America	A	Int./Div.	K	T					
10. American Funds The Income Fund of America	A	Int./Div.	J	T					
11. American Funds The Investment Co of America	A	Int./Div.	K	T					
12. American Funds New Perspective Fund	A	Int./Div.	K	T					
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Column B1 and D4)	A = \$1,000 or less B = \$1,001 - \$2,500 C = \$2,501 - \$5,000 D = \$5,001 - \$15,000 E = \$15,001 - \$50,000	F = \$50,001 - \$100,000 G = \$100,001 - \$1,000,000 H = \$1,000,001 - \$5,000,000 I = \$5,000,001 - \$10,000,000 J = \$10,000,001 - \$50,000,000 K = \$50,000,001 - \$1,000,000,000 L = \$1,000,000,001 - \$5,000,000,000 M = \$5,000,000,001 - \$25,000,000,000 N = \$25,000,000,001 - \$50,000,000,000 O = \$50,000,000,001 - \$1,000,000,000,000 P = \$1,000,000,000,001 - \$5,000,000,000,000 Q = \$5,000,000,000,001 - \$10,000,000,000,000 R = \$10,000,000,000,001 - \$50,000,000,000,000 S = \$50,000,000,000,001 - \$1,000,000,000,000,000 T = \$1,000,000,000,000,001 - \$5,000,000,000,000,000 U = \$5,000,000,000,000,001 - \$10,000,000,000,000,000 V = \$10,000,000,000,000,001 - \$50,000,000,000,000,000 W = \$50,000,000,000,000,001 - \$1,000,000,000,000,000,000 X = \$1,000,000,000,000,000,001 - \$5,000,000,000,000,000,000 Y = \$5,000,000,000,000,000,001 - \$10,000,000,000,000,000,000 Z = \$10,000,000,000,000,000,001 - \$50,000,000,000,000,000,000	F = \$50,001 - \$100,000 G = \$100,001 - \$1,000,000 H = \$1,000,001 - \$5,000,000 I = \$5,000,001 - \$10,000,000 J = \$10,000,001 - \$50,000,000 K = \$50,000,001 - \$1,000,000,000 L = \$1,000,001 - \$5,000,000,000 M = \$5,000,001 - \$10,000,000,000 N = \$10,000,001 - \$50,000,000,000 O = \$50,000,001 - \$1,000,000,000,000 P = \$1,000,001 - \$5,000,000,000,000 Q = \$5,000,001 - \$10,000,000,000,000 R = \$10,000,001 - \$50,000,000,000,000 S = \$50,000,001 - \$1,000,000,000,000,000 T = \$1,000,001 - \$5,000,000,000,000,000 U = \$5,000,001 - \$10,000,000,000,000,000 V = \$10,000,001 - \$50,000,000,000,000,000 W = \$50,000,001 - \$1,000,000,000,000,000,000 X = \$1,000,001 - \$5,000,000,000,000,000,000 Y = \$5,000,001 - \$10,000,000,000,000,000,000 Z = \$10,000,001 - \$50,000,000,000,000,000,000	F = \$50,001 - \$100,000 G = \$100,001 - \$1,000,000 H = \$1,000,001 - \$5,000,000 I = \$5,000,001 - \$10,000,000 J = \$10,000,001 - \$50,000,000 K = \$50,000,001 - \$1,000,000,000 L = \$1,000,001 - \$5,000,000,000 M = \$5,000,001 - \$10,000,000,000 N = \$10,000,001 - \$50,000,000,000 O = \$50,000,001 - \$1,000,000,000,000 P = \$1,000,001 - \$5,000,000,000,000 Q = \$5,000,001 - \$10,000,000,000,000 R = \$10,000,001 - \$50,000,000,000,000 S = \$50,000,001 - \$1,000,000,000,000,000 T = \$1,000,001 - \$5,000,000,000,000,000 U = \$5,000,001 - \$10,000,000,000,000,000 V = \$10,000,001 - \$50,000,000,000,000,000 W = \$50,000,001 - \$1,000,000,000,000,000,000 X = \$1,000,001 - \$5,000,000,000,000,000,000 Y = \$5,000,001 - \$10,000,000,000,000,000,000 Z = \$10,000,001 - \$50,000,000,000,000,000,000	F = \$50,001 - \$100,000 G = \$100,001 - \$1,000,000 H = \$1,000,001 - \$5,000,000 I = \$5,000,001 - \$10,000,000 J = \$10,000,001 - \$50,000,000 K = \$50,000,001 - \$1,000,000,000 L = \$1,000,001 - \$5,000,000,000 M = \$5,000,001 - \$10,000,000,000 N = \$10,000,001 - \$50,000,000,000 O = \$50,000,001 - \$1,000,000,000,000 P = \$1,000,001 - \$5,000,000,000,000 Q = \$5,000,001 - \$10,000,000,000,000 R = \$10,000,001 - \$50,000,000,000,000 S = \$50,000,001 - \$1,000,000,000,000,000 T = \$1,000,001 - \$5,000,000,000,000,000 U = \$5,000,001 - \$10,000,000,000,000,000 V = \$10,000,001 - \$50,000,000,000,000,000 W = \$50,000,001 - \$1,000,000,000,000,000,000 X = \$1,000,001 - \$5,000,000,000,000,000,000 Y = \$5,000,001 - \$10,000,000,000,000,000,000 Z = \$10,000,001 - \$50,000,000,000,000,000,000	F = \$50,001 - \$100,000 G = \$100,001 - \$1,000,000 H = \$1,000,001 - \$5,000,000 I = \$5,000,001 - \$10,000,000 J = \$10,000,001 - \$50,000,000 K = \$50,000,001 - \$1,000,000,000 L = \$1,000,001 - \$5,000,000,000 M = \$5,000,001 - \$10,000,000,000 N = \$10,000,001 - \$50,000,000,000 O = \$50,000,001 - \$1,000,000,000,000 P = \$1,000,001 - \$5,000,000,000,000 Q = \$5,000,001 - \$10,000,000,000,000 R = \$10,000,001 - \$50,000,000,000,000 S = \$50,000,001 - \$1,000,000,000,000,000 T = \$1,000,001 - \$5,000,000,000,000,000 U = \$5,000,001 - \$10,000,000,000,000,000 V = \$10,000,001 - \$50,000,000,000,000,000 W = \$50,000,001 - \$1,000,000,000,000,000,000 X = \$1,000,001 - \$5,000,000,000,000,000,000 Y = \$5,000,001 - \$10,000,000,000,000,000,000 Z = \$10,000,001 - \$50,000,000,000,000,000,000
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Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

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Name of Person Reporting	Date of Report
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IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/* Thomas L. Halkowski

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		527	615	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	131	765	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		357	941
Real estate owned – personal residence		766	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		89	100				
Cash value-life insurance							
Other assets itemize:							
Fish & Richardson Cash Balance Plan		729	715				
Fish & Richardson Capital Account		163	000				
Thrift Savings Plan		65	760	Total liabilities		357	941
				Net Worth	3	115	014
Total Assets	3	472	955	Total liabilities and net worth	3	472	955
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Listed Securities

American Funds American Balanced Fund	\$ 26,412
American Funds Capital World Growth & Income Fund	12,887
American Funds Growth Fund of America	27,093
American Funds Income Fund of America	12,464
American Funds Investment Company of America	26,099
American Funds New Perspective Fund	23,285
Schwab S&P 500 Index Fund	1,003,525
Total Listed Securities	\$ 1,131,765

STATE OF DELAWARE
COUNTY OF NEW CASTLE

AFFIDAVIT

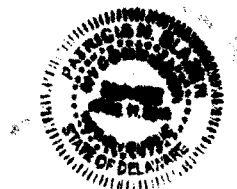
I, Thomas L. Halkowski, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

4/11/14
(DATE)

Thomas L. Halkowski
(NAME)

(NOTARY)
Patricia H. BLAZER, Notary Public State of Delaware

PATRICIA H. BLAZER
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires April 11, 2014



**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
June 4, 2014**

Today, we will hear from four well-qualified judicial nominees, one to the district court in the great state of Vermont and three to U.S. Court of Federal Claims.

I am happy to welcome Vermont Supreme Court Justice Geoffrey Crawford. Justice Crawford has significant criminal and civil experience. He was a Vermont trial court judge for 11 years and recently became an Associate Justice on the Vermont Supreme Court. He formerly was a partner in a Burlington law firm. Justice Crawford earned his B.A., *cum laude*, from Yale University and his J.D., *cum laude*, from Harvard Law School.

I recommended Justice Crawford to President Obama after he was vetted and recommended to me by Vermont's non-partisan Judicial Nominating Commission. I did not know Justice Crawford personally before this process but when I did meet him I was struck by his brilliance, compassion, and humility. Justice Crawford earned a stellar reputation in Vermont's legal community and also from those who had appeared him as a careful jurist who understands the effects that legal rulings have on people's lives. I have no doubt that once confirmed he will bring that same understanding and impartiality to the Federal courthouse in Rutland, Vermont.

I also welcome to the Committee today, three nominees to serve on the Court of Federal Claims—Judge Nancy Firestone, Thomas Halkowski, and, in particular, Lydia Griggsby, who has served on my Judiciary Committee staff since 2006 and currently serves as my Chief Counsel for Privacy and Information Policy. I recommended Lydia to the President for this position because I know her intellect and good judgment will make her a fine judge. Before Lydia came to work for me on committee, she served in the Justice Department and tried several matters before the Court of Federal Claims. Once she is confirmed, the court's gain will certainly be the Judiciary Committee's loss.

Judge Nancy Firestone has served with distinction on the U.S. Court of Federal Claims since 1998. I have no doubt that her expertise will be a great benefit to the court as she continues her service for another 15-year term. Thomas Halkowski is a principal at Fish & Richardson, a law firm specializing in intellectual property law in Wilmington, Delaware. He began his legal career clerking on the court to which he is nominated for Judge Roger Andewelt. He also clerked for then-Chief Judge Helen Nies on the Federal Circuit so once he is confirmed, his career will have gone full circle.

I welcome all of the nominees here today. After I turn to Ranking Member Grassley, you will have an opportunity to introduce us to your families.

####

**Senator Grassley
Questions for the Record**

**Geoffrey W. Crawford,
Nominee, U.S. District Judge for the District of Vermont**

1. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?
2. What is the most important attribute of a judge, and do you possess it?
3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
4. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
5. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
 - b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁵
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources

² *Id.* 2689-2690.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
9. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.
10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
12. If confirmed, how do you intend to manage your caseload?
13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
14. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.
15. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.
 - a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

16. Please describe with particularity the process by which these questions were answered.
17. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record
Nancy B. Firestone**

Nominee, Judge for the U.S. Court of Federal Claims

1. What is the most important attribute of a judge, and do you possess it?
2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
3. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
4. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
5. If confirmed, how do you intend to manage your caseload?
6. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
7. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

**Senator Chuck Grassley
Questions for the Record**

**Lydia Griggsby
Nominee, Judge for the U.S. Court of Federal Claims**

1. What is the most important attribute of a judge, and do you possess it?
2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
3. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
4. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
5. If confirmed, how do you intend to manage your caseload?
6. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
7. Would you please comment on how you will transition from being an advocate to being a Judge?
8. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

**Senator Chuck Grassley
Questions for the Record
Thomas Halkowski**

Nominee, Judge for the U.S. Court of Federal Claims

1. What is the most important attribute of a judge, and do you possess it?
2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
3. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
4. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
5. If confirmed, how do you intend to manage your caseload?
6. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
7. Would you please comment on how you will transition from being an advocate to being a Judge?
8. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

**Senator Grassley
Questions for the Record**

**Geoffrey W. Crawford,
Nominee, U.S. District Judge for the District of Vermont**

- 1. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?**

Response: Two bad qualities come to mind. The first is impatience. Some judges forget the importance of a case to the participants or the effort the attorneys and their clients have made to present it. A rushed hearing or a hasty ruling provides little assurance to the public that their legal system is working fairly.

The other quality is arrogance. Some judges, fortunately only a few, forget that their appointment is an occasion for humility and service. Arrogance can blind a judge to his or her mistakes and, like impatience, causes people to distrust the court system.

- 2. What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute is the ability to work hard – to take great pains with the facts and the law – in order to reach the right result. There is really no substitute. If a judge is willing to work hard, the other positive qualities – clear writing, a positive demeanor, control of the docket, and leadership within the courthouse – tend to fall into place. I believe I have developed this ability over the course of my career as a judge.

- 3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe the most important aspect of judicial temperament is an ability to run a courtroom calmly, predictably, fairly and with authority. The judge should also have an ability to direct the administration of his or her court. I seek to meet this standard every day at work in our state court system, and I believe I am generally successful.

- 4. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I assure you that if confirmed, I am fully committed to following the precedents of the U.S. Supreme Court and the U.S. Court of Appeals for the Second Circuit. Respect for precedent and legal authority is a great safeguard against an excessive belief in one's own wisdom and judgment. It provides relative predictability for people who tailor their

conduct to our decisions. It is a necessary and fundamental limitation on individual judicial decision-making within a democratic system of government.

5. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**
 - a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹**
 - i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**
 Response: Yes, the statement limits the import and effect of the *Windsor* decision to states which have exercised their own authority to allow same-sex marriage.
 - ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**
 Response: I understand Justice Kennedy to be referring to marriages authorized by state law.
 - iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**
 Response: That is my understanding of this decision.
 - iv. **Are you committed to upholding this precedent?**
 Response: Yes, I am committed to following this decision and all other decisions of the U.S. Supreme Court to the letter.
 - b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."²**

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

² *Id.* 2689-2690.

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes.

- c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."³

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes.

- d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"⁴

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes.

- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"⁵

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

- i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

- ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In a case of first impression, I begin by examining the text of the statutes, regulations, and court rules at issue in the case. I turn next to analogous judicial decisions addressing similar issues. I start by reviewing decisions on such issues within our own state. I also look at the ways similar questions have been resolved by courts in other states. For common law questions, particularly tort and contract, I often review the American Law Institute Restatements.

In addressing novel questions, I seek to develop an answer that goes no further than what is required by the particular case. The most important principle for me is that my answer should be consistent with the surrounding body of law. It should be unsurprising and grow out of prior related decisions in a natural, predictable way.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would follow the authoritative decision despite my reservations. It would be the responsibility of the higher court to change the rule; it would not be my role to do so.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: The primary occasions when it is appropriate for a federal court to declare a federal statute to be unconstitutional are when the statute violates a constitutional provision or when it exceeds the enumerated powers delegated to Congress. A decision declaring a statute to be unconstitutional should be the last resort after less grave ways to resolve the case through statutory construction or more narrow grounds for decision have proved to be unavailable.

9. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No.

- 10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: The best evidence is my service as a state court trial judge and appellate judge since 2002. During this time my decision-making has never been politically or ideologically motivated. I believe that my written decisions demonstrate my commitment to the rule of law and my respect for precedent.

- 11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I would offer my reputation as a trial judge and an appellate judge in the state court system. I listen carefully to both sides before making a decision. Through making a determined effort to understand the position of both sides, I have learned to leave my personal views out of the case and to decide cases on the merits of the facts and the applicable law.

- 12. If confirmed, how do you intend to manage your caseload?**

Response: I believe in remaining in contact with the case through meeting regularly with counsel to assess progress. I try to make every motion hearing an opportunity to discuss what lies ahead in addition to resolving the particular issue. I will accept any reasonable pre-trial schedule and prefer that the lawyers reach agreement on these time frames. Once a schedule is ordered, however, I expect to follow and enforce it unless there is a good reason for an extension.

- 13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: The judge has the principal responsibility for controlling the pace of litigation. Once he or she establishes a direction, the attorneys will follow. The most important step is to establish an expectation that cases will get tried routinely and on time. Once court time is committed, nothing short of a serious medical emergency should result in a delay. Parties who know that the judge intends to try the case promptly will either prepare for trial or settle.

The second thing a judge can do to control litigation is to respond quickly to motions, especially the dispositive motions to dismiss and for summary judgment which narrow and shape the issues for trial. A judge who develops a culture of responsive, timely rulings within his or her courthouse will have far less trouble with delay and back-log.

The judge must also develop an expectation that pre-trial deadlines and time commitments will be honored. There is no room in our system for petty tyrants, but a serious professional commitment to enforcing reasonable time limits causes everyone to lift their game.

I have had good success managing extremely crowded state court dockets, both civil and criminal, with these principles in mind. I am confident that this experience would serve me well in the federal system if confirmed.

- 14. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: After reading the briefs and the file, I always start by writing the factual portion of the decision. Once the facts are written, I find that I have usually come to some conclusions about the applicable law. I write that portion quickly, leaving gaps for research and authority. Then I test my initial legal conclusions by reading each case which supports the analysis. Doing the legal research often leads to changes or development of the analysis. This process continues until I am satisfied that I have stated the facts of the case accurately and that I have addressed the legal issues thoroughly and correctly.

I look for support in my decision writing from the factual record, either the pleadings and affidavits for motion practice or the testimony and exhibits after a court trial. For the legal analysis, I depend upon the applicable statutes and case law and the decisions of other state and federal courts for guidance when there is no direct authority in our state.

- 15. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

- 16. Please describe with particularity the process by which these questions were answered.**

Response: I received the written questions on June 6, 2014, following my appearance before the Senate Judiciary Committee. I answered the questions to the best of my ability on June 8 and 9, 2014, and, after discussing them with a Justice Department attorney, authorized their submission to the Committee.

- 17. Do these answers reflect your true and personal views?**

Response: They do reflect my true and personal views.

Senator Chuck Grassley
Questions for the Record
Nancy B. Firestone
Nominee, Judge for the U.S. Court of Federal Claims

1. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is to be fair and impartial when deciding a case. Over the past 15 years, I have decided each case before me with an open mind and based on binding precedent.

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: It is very important for a judge to be even-handed with the parties and even-tempered. The Court of Federal Claims is the national court where citizens can sue the federal government for damages. It is vital that litigants feel that they have been heard, understood, and treated fairly, in all proceedings. For the past 15 years I have done my best to ensure that I live up to this standard and work to meet this standard in all of the matters before me.

3. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: As a judge I am both bound and committed to following precedent and have done so in all of my decisions. I have never decided any case based on my personal views or with any political ideology in mind. I believe my record over the past 15 years establishes my commitment to following precedent in all cases and to faithfully applying precedent to the facts presented.

4. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: Over the past 15 years, I have handled over 750 cases and issued nearly 600 decisions. I always treat each litigant fairly without regard to my personal views. I believe my record demonstrates my commitment to the principles of fairness required of a judge.

5. If confirmed, how do you intend to manage your caseload?

Response: Case management is a critical responsibility of a judge. I take that responsibility very seriously and take many steps to ensure that my docket is kept up to date. During the past 15 years, I have been committed to maintaining a current docket. To keep my docket current, I conduct weekly docket reviews with my law clerks and judicial

assistant. I also review court filings as they come in to ensure that routine matters are addressed immediately and motions are handled in a timely manner.

6. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Controlling the pace and conduct of litigation has been very important to me over the last 15 years. I hold regular status conferences with the parties to ensure that cases stay on schedule. I also make sure to resolve motions quickly so that issues are narrowed where possible.

7. **In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: The decisions of the Supreme Court and Federal Circuit are binding on me. In all of my decisions I have faithfully applied precedent. My decisions reflect that commitment and I do not intend to deviate from that commitment in the future.

**Senator Chuck Grassley
Questions for the Record**

**Lydia Griggsby
Nominee, Judge for the U.S. Court of Federal Claims**

- 1. What is the most important attribute of a judge, and do you possess it?**

Response: I believe that the most important attributes of a judge are impartiality and integrity. A judge should approach each case objectively and with an open mind, regardless of personal views or beliefs. I believe that a judge should also act with the highest degree of integrity in deciding cases and in interacting with counsel and the parties in a particular case. I believe that I have demonstrated impartiality and integrity throughout my legal career when interacting with my colleagues, opposing counsel, judges, court staff and the public.

- 2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be fair, impartial, patient, and respectful towards all parties who appear before the court. An appropriate judicial temperament helps to ensure public confidence in the judicial system and that every litigant feels that he or she is being treated fairly and had an opportunity to be heard. A judge must also faithfully apply the law to the facts of a particular case and not be influenced by popular opinion or criticism. Throughout my legal career, I have endeavored to conduct myself with the utmost integrity and to treat all participants in the legal process fairly, with respect and professionalism.

- 3. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: If confirmed, I will faithfully apply precedent and the text of the law in all of my judicial decision-making. Political ideology or motivation should never affect the outcome of a case.

- 4. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I believe that a judge must be impartial and should always approach a case objectively, fairly and with an open mind, regardless of any personal views or beliefs. Throughout my legal career, I have endeavored to conduct myself with the utmost integrity and to treat all participants in the legal process with respect and professionalism. If confirmed, I will always administer justice fairly, with integrity and with an open mind.

5. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will work diligently on all matters, as I have done for nearly 20 years as a government attorney. I will also seek the advice of experienced colleagues and court staff regarding the best practices for the efficient and effective management of my chambers and caseload.

6. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe that judges have an important role in controlling the pace and conduct of litigation. If confirmed, I would hold appropriate status conferences, issue clear and precise scheduling orders and be diligent in ruling on pending motions to facilitate a timely and fair resolution of the matters before me.

7. Would you please comment on how you will transition from being an advocate to being a Judge?

Response: If confirmed, I will transition from being an advocate to a judge by being fair and open-minded in all matters that would come before me, consulting with my colleagues on the best practices for making the transition to being a judge, participating in continuing legal education courses on relevant areas of the law and working diligently to manage my docket.

8. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I am committed to faithfully following the binding precedent of the United States Court of Appeals for the Federal Circuit and the United States Supreme Court. I will do so regardless of whether I personally agree or disagree with the precedent.

Senator Chuck Grassley
Questions for the Record
Thomas Halkowski
Nominee, Judge for the U.S. Court of Federal Claims

1. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is respect for the rule of law - ensuring it is applied carefully and impartially without regard for one's own personal views. I possess this attribute. I have faithfully adhered to the law as well as have respected other parties while clerking at the United States Court of Federal Claims, while clerking at the United States Court of Appeals for the Federal Circuit, while representing the United States as an attorney at the United States Justice Department, and while representing a wide variety of private companies as an attorney at Fish & Richardson P.C.

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should be impartial, humble, and fair. A judge should also be careful and diligent in reviewing the materials submitted by counsel, should be respectful and considerate toward each party, and keep an open-mind to the positions being advocated by each side. I meet this standard.

3. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I have never held a position in, or rendered services to, a political party or election committee; nor have I served in any political positions in government. If confirmed, I assure without reservation that I would adhere with fidelity to applicable precedent and text of the law without any consideration regarding political ideology or motivation.

4. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: For the public to have confidence in our courts, parties must be treated impartially, fairly, and with respect. During my career as a clerk serving for Judge Roger Andewelt and subsequently for Chief Judge Helen Nies, I learned the importance of faithfully adhering to the rule of law and applying precedent without regard to personal views. Later, as an attorney for the Justice Department and subsequently as an attorney representing private companies while a member of Fish & Richardson P.C., I gained further understanding of the need to represent my clients without regard to personal views as well as the importance of fairly presenting issues to the Court. My character as

evidenced through-out my career evidences a commitment to treat others with respect. If confirmed, I assure without reservation that I would continue to stay true to these values and would faithfully and impartially apply the law putting aside any personal views.

5. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will diligently apply the United States Court of Federal Claims Rules by, among other things, promptly convening scheduling conferences, efficiently addressing discovery disputes, encouraging parties to meaningfully meet-and-confer in an effort to narrow issues in dispute, carefully ruling on dispositive motions, and encouraging parties to reasonably consider settlement.

6. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: In my experience, Judges on the United States Court of Federal Claims play a vital role in controlling the pace and conduct of litigation. If confirmed, I will, in addition to the approaches outlined above in response to Question No. 5, meet regularly with staff in chambers to review the status of each case as well as maintain communication with litigants to ensure their cases are proceeding at a reasonable pace.

7. Would you please comment on how you will transition from being an advocate to being a Judge?

Response: The role of a judge in fairly assessing the evidence and argument presented from both sides is different from the role of an advocate seeking to persuade a judge to rule in favor of a client. Yet, when properly approached, both judge and attorney must have a deep and abiding respect for the impartial application of the law to resolve a dispute. My decades of experience litigating matters both on behalf of the United States and on behalf of private companies – including working on many trials – will provide valuable preparation for the work of being a judge, if I am confirmed. Also, I was fortunate to have served as a judicial clerk for Judge Roger Andewelt of the United States Court of Federal Claims and, subsequently, Chief Judge Helen Nies of the United States Court of Appeals for the Federal Circuit. Thanks to the wise counsel of both Judge Andewelt and Chief Judge Nies, I learned much about effectively and properly adjudicating disputes. Both my judicial clerking experience and my work litigating disputes have impressed upon me the critical importance of a court's careful assessment of each case, hearing with an open-mind the argument and diligently reviewing the evidence from each side, and impartially applying the law to the facts to arrive at a decision without regard for any personal views. If I am fortunate enough to be confirmed, I look forward to leveraging the knowledge and experience gained from my judicial clerkships along with my work as trial counsel as I transition to the bench.

8. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and

giving them full force and effect, even if you personally disagree with such precedents?

Response: If confirmed, I assure without reservation that I would adhere with fidelity to the Supreme Court and Federal Circuit Court precedent without regard to any personal views.



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SIXTH CIRCUIT
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VIA EMAIL AND FIRST-CLASS MAIL

May 21, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Geoffrey W. Crawford to the
United States Court for the District of Vermont

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Justice Geoffrey W. Crawford who has been nominated for a position on the United States District Court for the District of Vermont. The Committee is of the opinion that Justice Crawford is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Justice Crawford.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Geoffrey W. Crawford (via email)
The Honorable W. Neil Eggleston (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

May 21, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on May 21, 2014.

**NOMINATIONS OF PAMELA HARRIS, NOMINEE
TO BE CIRCUIT JUDGE FOR THE FOURTH
CIRCUIT; HON. PAMELA PEPPER, NOMINEE
TO BE DISTRICT JUDGE FOR THE EASTERN
DISTRICT OF WISCONSIN; BRENDA K.
SANNES, NOMINEE TO BE DISTRICT JUDGE
FOR THE NORTHERN DISTRICT OF NEW
YORK; PATRICIA M. McCARTHY, NOMINEE
TO BE JUDGE OF THE COURT OF FEDERAL
CLAIMS; AND HON. JERI KAYLENE SOMERS,
NOMINEE TO BE JUDGE OF THE COURT OF
FEDERAL CLAIMS**

TUESDAY, JUNE 24, 2014

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:18 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Chuck Schumer, presiding.

Present: Senators Schumer, Coons, Blumenthal, Grassley, and Cruz.

Senator SCHUMER. The hearing will come to order, and to help our colleagues get on with their busy schedules, Senator Grassley will put his opening statement in the record.

[The prepared statement of Ranking Member Grassley appears as a submission for the record.]

Senator SCHUMER. We will proceed immediately to Senator Mikulski of Maryland.

**PRESENTATION OF PAMELA HARRIS, NOMINEE TO
BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, BY
HON. BARBARA A. MIKULSKI, A U.S. SENATOR FROM THE
STATE OF MARYLAND**

Senator MIKULSKI. Good morning, Senator Schumer, Senator Grassley. Senator Cardin and I want to thank Senators Leahy and Grassley for scheduling this hearing and Senator Schumer for graciously agreeing to preside.

Today Senator Cardin and I are delighted and honored to bring to your attention a nominee for the Fourth Circuit, Pamela Harris.

You are really going to like Pamela Harris as you get to know her, and I hope we will get to vote for her.

Senator Cardin and I recommended her to President Obama with the utmost confidence because of her ability, her talent, and her competence. The ABA agrees with us. They gave her the highest rating and said she was unanimously well qualified.

Today, as we bring her to your attention, know that we take our advise-and-consent responsibility very seriously. I have four criteria: absolute integrity, judicial competence and temperament, a commitment to core principles of the Constitution, and a history of civic engagement in Maryland.

Pamela Harris is the embodiment of these principles. She has dedicated her practice and her career to furthering the practice of appellate lawyer activity and enhancing the role that law plays in the public interest. She is an outstanding nominee and will be absolutely an asset to the Fourth Circuit.

Ms. Harris' career spans academia, private practice, and Government with a common thread of public service and public commitment. We are proud to say that Ms. Harris is a homegrown girl. Although born in Connecticut, she has called Maryland her home since she was a child, graduating from our public schools and then she went on to Yale. We forgive her for that, but we welcomed her back when she came. At Yale, she received both her bachelor's and law degrees.

She then went on to complete a clerkship for the D.C. Circuit Court, and she was also a clerk for Justice Stevens on the Supreme Court. Serving at the Department of Justice's Office of Legal Counsel, she then spent 10 years appearing on a regular basis before the Supreme Court. This is a woman who has extensive appellate experience while counsel and then partner to O'Melveny and Myers, taking on very complex issues.

She has a distinguished career in academia, being a professor at the University of Pennsylvania Law School, at the Harvard Appellate Practice Clinic, and later at Georgetown. She served as the executive director of the Supreme Court Institute.

But at the same time, she found her way back to Maryland and stayed very close to people. Whether it was a pro bono appellate clinic at O'Melveny, to work with Maryland's public defender on an amicus curiae brief involving Montgomery County Schools, or other activity, she has worked to enhance law, to give her services pro bono, and to work with people.

I believe her temperament is such that you are going to find her a keen mind and yet a humble personality, unusual among many lawyers at that level, but she then is an unusual nominee. She comes with a great personal narrative that I know she will share with you, an incredible résumé, but a real commitment to our Constitution and our core principles. I think she would be a great asset in the Fourth Circuit.

So I hope that the Committee reports her favorably to the full Senate and we act on this expeditiously before we adjourn in November—in October.

Senator SCHUMER. Thank you, Senator Mikulski. I got scared when you said November.

[Laughter.]

Senator SCHUMER. Senator Cardin.

**PRESENTATION OF PAMELA HARRIS, NOMINEE TO
BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, BY
HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE
STATE OF MARYLAND**

Senator CARDIN. Chairman Schumer, Senator Grassley, thank you very much for the courtesy of allowing us to introduce Pam Harris.

I am very proud to be a partner with Senator Mikulski in a process on judicial nominations in which we have an interview process where we try to get the very best to serve on our courts. And as a result of Senator Mikulski's leadership, I am very proud of the nominees that have been brought forward to this Committee by President Obama with the strong support of Senator Mikulski and myself.

Pam Harris is an exceptional candidate. I have interviewed several candidates for judgeships. I do not think I have ever seen a person more suited and more qualified to sit on our appellate court than Pam Harris. She has devoted her entire career basically to appellate law and to understanding our judicial system. She is well qualified. She has worked in the executive branch. She has worked in Justice. She has worked for our courts as a clerk, as Senator Mikulski has pointed out. She is exceptionally well qualified with tremendous legal experience in Government, the private sector, and academia. She is an excellent Supreme Court litigator and in my view one of the best in the country for this type of practice.

Ms. Harris has an appreciation for the rights and responsibilities of each branch of Government, having clerked at the Federal appellate courts, supervised policy initiatives at the Department of Justice. She has dedicated her career and professional life to improving the administration of justice as a public servant. She has demonstrated a commitment to protect civil rights and individual liberties through her pro bono work. Her roots are in Montgomery County, Maryland. She is an active member of her community, giving back to her local schools and volunteering in the community.

Let me just tell you a little bit of background about her family because I think it is telling, because this truly is the American dream. Her grandmother was a Polish Jewish immigrant to the United States who valued education and worked hard to overcome personal adversity. Her mom put herself through law school with young children after a divorce and died from cancer a few years later. Ms. Harris herself relied in part on a Pell grant to attend college at Yale, and I understand that all of Ms. Harris' siblings are now lawyers. So it is safe to say that her family story and history is truly the American dream and the American experience, and the public service and seeking to uphold the rule of law runs in the blood of her family.

You have heard Senator Mikulski talk about her extraordinary background, the law firms that she has worked for, her public career. Ms. Harris co-directed Harvard Law School's Supreme Court and Appellate Practice Clinic and was a visiting professor at Georgetown University Law School. In 2009, Ms. Harris was named the executive director of the Supreme Court Institute at

Georgetown, serving as executive director until 2010. Ms. Harris then joined the Justice Department Office of Legal Policy where she served as the Principal Deputy Assistant Attorney General until returning to Georgetown in 2012. She is currently a visiting professor at Georgetown University Law Center and a senior adviser to the Supreme Court Institute.

As Senator Mikulski pointed out, it is not surprising that she has been given the highest qualifications by the American Bar Association's Standing Committee on the Federal Judiciary.

Let me just mention one or two other points, if I might. First, there is a letter—and I will ask these letters be made part of the record.

Senator SCHUMER. Without objection.

[The letters appear as submissions for the record.]

Senator CARDIN. They are from a long list of distinguished lawyers who have served in Republican and Democratic administrations who praise Pam Harris' qualifications and urge the Committee to quickly confirm—recommend confirmation of her appointment. She has taken hundreds of cases before the Federal Court of Appeals and the U.S. Supreme Court, and her practice has been pretty evenly divided between civil and criminal matters, so she understands both of them exceedingly well. She has experience also at the State court level, so she has the whole package. She has the experience, criminal, civil, private, public; she has an incredible career for pro bono work.

So I personally want to thank her, and I want to thank her family for being willing to serve in this capacity. We know it is going to be a challenge as far as the demands that will be on her time, and we strongly recommend her confirmation.

Senator SCHUMER. Thank you, Senator Cardin. And that completes the introductions for Pamela Harris.

We have five members of the bench—and I understand you both have busy schedules, so feel free to go on to your business if you would prefer that.

Senator MIKULSKI. Mr. Chairman, we ask unanimous consent that two letters of support—one from the list of bipartisan legal professionals supporting Ms. Harris—be entered into the record, and then a letter from the National Women's Law Center on her—

Senator SCHUMER. Without objection.

[The letters appear as submissions for the record.]

Senator SCHUMER. Okay. Good. Now we have five district court nominees to speak about. They are Brenda Sannes, of the Northern District of New York; Pamela Pepper, of the Eastern District of Wisconsin; Patricia McCarthy, of the Federal Court of Claims; and Jeri Somers, of the Federal Court of Claims. We will let our two guests—I want to say a few words about Ms. Sannes from the Northern District, but I will do that after our two guests say their words about Pamela Pepper. And I know that Senator Coons, who has graciously agreed to take over for me chairing this hearing, has some words to say about Patricia McCarthy and Jeri Somers. So if that is okay with everyone, we will go Johnson, Baldwin, Schumer, Coons.

Senator Ron Johnson, of Wisconsin.

**PRESENTATION OF HON. PAMELA PEPPER, NOMINEE TO
BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF
WISCONSIN, BY HON. RON JOHNSON, A U.S. SENATOR FROM
THE STATE OF WISCONSIN**

Senator JOHNSON. Thank you, Chairman Schumer, Ranking Member Grassley, Members of the Committee. I am here to recommend to the Committee another Pam, the Honorable Pamela Pepper, to be the United States District Judge for the Eastern District of Wisconsin. Pam has served with distinction as the current chief judge of the United States Bankruptcy Court for the Eastern District of Wisconsin. Although not native to our State, she has set down deep roots in Wisconsin, first serving in the office of the United States Attorney for the Eastern District of Wisconsin, followed by private practice in Milwaukee, and finally serving 9 years as a bankruptcy court judge.

Pam was born in the Delta of Mississippi in a town called Leland. Her parents were both teachers and instilled in her an intellectual curiosity which has been apparent throughout her career. She migrated north for college and attended Northwestern University in Chicago, where she received a degree in theater. After helping a friend get through the LSAT review course, she realized she might want to explore other careers and ended up taking the LSAT herself.

She obviously had prepared herself well because she performed well on the LSAT and was accepted into Cornell University School of Law.

Senator SCHUMER. An excellent school, I might add.

[Laughter.]

Senator JOHNSON. Apparently.

After graduation, she clerked with distinction for Judge Frank Johnson on the Eleventh Circuit Court of Appeals and then moved on to become a prosecutor in the United States Attorney's Office in Chicago.

Pam is widely respected within the profession, evidenced by having held offices as the president of the Milwaukee Bar Association and the chairperson of the Board of Governors of the State Bar of Wisconsin. She is an instructor of national stature and speaks frequently on trial practice and evidence. She is currently an instructor at the Federal Judicial Center.

I have had the opportunity to speak to practitioners that have appeared before her bankruptcy court. They have told me of her patience with attorneys, which is a virtue of hers they all value. Pam possesses a great sense of humor, which she often uses to put litigants at ease.

She displays compassion in making tough decisions by explaining the rationale for those decisions clearly so her reasoning is understood by all. She has shown great dexterity in reacting to difficult situations in court with calm reasoning.

Finally, Pam has been described as a practical judge who promptly resolves disputes while faithfully adhering to the rule of law. Pam's intellectual curiosity, her demonstrated ability to learn new areas of the law, and efficiently administer her office has convinced me she would continue to excel in a new role as a Federal district court judge.

Judge Pepper has my full support, and I am happy to recommend her to the Senate for swift confirmation.

I would like to conclude my remarks by thanking the hard-working members of our bipartisan nomination commission for their dedication and efforts. I would also like to thank Senator Baldwin for her continued support of this successful nominating process that has once again resulted in the selection of a well-qualified jurist, Judge Pamela Pepper, who will serve the Nation and the people of Wisconsin's Eastern District well.

Thank you.

Senator SCHUMER. Thank you, and I thank both you and Senator Baldwin for your bipartisan efforts in this area.

Senator Baldwin.

PRESENTATION OF HON. PAMELA PEPPER, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WISCONSIN, BY HON. TAMMY BALDWIN, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator BALDWIN. Thank you, Chairman Schumer, Ranking Member Grassley, Senator Coons, and all other Members of the Committee who may be here today. It gives me great pleasure to appear before you this morning to introduce Judge Pamela Pepper, the President's nominee for the United States District Court for the Eastern District of Wisconsin. And I am proud to speak before you for the second time this year in support of a highly qualified individual nominated to fill a judicial vacancy in my home State of Wisconsin.

Ensuring that the people of Wisconsin are supported by dedicated public servants in our judicial system has been a top priority of mine since I joined the Senate last year, and I am proud of the work that my colleague Senator Johnson and I have done together to advance this important goal.

Judge Pamela Pepper has had a distinguished career as a judge, a Federal prosecutor, public defender, and an attorney in private practice, and I applaud the President for nominating her. She will continue her outstanding service on the bench, and the people of Wisconsin will benefit from having this experienced and dedicated public servant as a U.S. district judge.

Pamela Pepper has served as the chief bankruptcy judge for the Eastern District of Wisconsin since 2010 and has served as bankruptcy judge on that court since 2005. Judge Pepper has also contributed significantly to the field of bankruptcy as a leader in the National Conference of Bankruptcy Judges and the American Bankruptcy Institute, and as associate editor for the American Bankruptcy Law Journal.

Before assuming her position as a bankruptcy judge, Pamela Pepper spent 8 years as a solo practitioner engaged in criminal defense work, including through appointments by the Wisconsin State Public Defender Service and the Federal Defender Service of Wisconsin.

Judge Pepper began her legal career in public service working for 7 years as a Federal prosecutor in the U.S. Attorney's Offices in Chicago and then in Milwaukee, Wisconsin.

Prior to assuming her role on the bankruptcy court, Judge Pepper also held numerous leadership positions in the legal community, including with the Board of Directors of the Federal Defender Service of Wisconsin, the State Bar of Wisconsin, and the Eastern District of Wisconsin Bar Association, and the Milwaukee Bar Association.

As you heard, Judge Pepper received her J.D. from Cornell, where she was an editor in the Cornell Law Review and a winner of the Sutherland Moot Court competition.

From 1989 to 1990, she was a law clerk to the Honorable Frank J. Johnson, Jr., of the U.S. Court of Appeals for the Eleventh Circuit.

Judge Pepper lives in Shorewood, Wisconsin, with her son, Leland, who I am delighted joins us here today. Senator Johnson and I strongly support Judge Pepper's nomination to the U.S. District Court for the Eastern District of Wisconsin, and I urge this Committee and the entire Senate to confirm her expeditiously.

Senator SCHUMER. Thank you, Senator Baldwin, and I thank you and Senator Johnson for being here. I know you two have busy schedules, so we understand if you cannot stay to listen to the rest of the proceedings.

Now I am going to read my remarks about Brenda K. Sannes of the Northern District, and then I will turn the gavel over to Senator Coons, who has graciously agreed to continue chairing this panel, and I believe he has remarks for Patricia McCarthy and Jeri Somers. Then we will, at Senator Grassley's request, first do the circuit court judge nominee, Pamela Harris, and then do the four district court nominees—Ms. Sannes, Ms. Pepper, Ms. McCarthy, and Ms. Somers. Four women, excellent. Okay, five women altogether. Yes, that is very good.

PRESENTATION OF BRENDA K. SANNES, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK, BY HON. CHUCK SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Good morning, and I want to thank Ranking Member Grassley for being here, and I want to thank Senator Coons, who I said a moment ago has graciously agreed to chair the hearing—he has many good qualities, and graciousness is indeed one of them—and for all our witnesses.

Now, I could not be more pleased to come before the Committee today to introduce my 20th nominee to the Federal district court bench in New York, Brenda K. Sannes. Ms. Sannes is the very model of a Federal judge in both qualification and temperament. Ms. Sannes passes my three-part test for becoming a Federal judge within an A-plus, a grade that she appears to have received at every juncture in her career. Indeed, my first criteria is excellence, to be legally excellent, not a political hack or anything like that.

Ms. Sannes earned her B.A. magna cum laude from Carleton College and her law degree, also magna cum laude—it is too bad our two witnesses are gone—from the University of Wisconsin Law School, where she was articles editor of the Law Review.

After graduating, Ms. Sannes clerked for the renowned Judge Jerome Farris of the United States Court of Appeals for the Ninth

Circuit. She settled first in Los Angeles, where she worked as a litigation associate with the law firm of Wyman, Bautzer, Christensen, Kuchel and Silvert, and then moved to the U.S. Attorney's Office for the Central District of California. But, fortunately for central New York and for upstate New York, Ms. Sannes next moved to Syracuse where, since 1988, she has dedicated her talents to our Nation's service as Assistant U.S. Attorney for the Northern District of New York. Most recently, her work as head of the appellate division there has earned her the respect and accolades of judges all over the Second Circuit.

Along the way, Ms. Sannes has received awards that are literally too numerous to mention here. By way of example, she has been lauded by the FBI, the L.A. Police Department, the U.S. Postal Inspection Service, and the Organized Crime Drug Enforcement Task Force.

Ms. Sannes' experience in public service has helped her to meet my second important qualification for becoming a judge: moderation. I do not like ideologues on the bench, far left or far right, because they tend to—they often impose their views rather than interpret the law. Talk to anyone who has practiced law with her or judges before whom she has appeared or even counsel who have been on opposing sides of cases from her. They will tell you she is unerringly fair, listens intently, makes reasonable decisions, and presents only the most solid argument in her cases. And not only has she dedicated herself and her entire career to public service, she has found time to mentor young lawyers and teach and lecture aspiring lawyers on a host of criminal justice issues.

Finally, all other things being equal, I look for diversity in candidates on the bench. I think it is important that the communities served by our Federal judges see judges who are like them and whose values and experiences are likely to reflect their own. Ms. Sannes will be only the second female judge in the history of the Northern District of New York, one whose arrival will be welcome not just by women, of course, but by everyone who values the quality and fairness of the Federal judiciary. I was proud to nominate the first woman nominee to the bench in the Northern District, and now I am equally proud to nominate the second.

In fact, Ms. Sannes' entire family reflects the great community that they come from. Here today with her is her husband, Steve Clymer, and he has earned very high marks for his service in the U.S. Attorney's Office in the Northern District of New York. She is also accompanied by her sons Matthew, 19, a physics major at Cornell—as I mentioned, a great institution—Samuel, who is 16; and Benjamin, who is 10. I am told that Ben will be missing his second to last day of school, which is Movie Day, to be here with his mother. I hope they are showing a good legal movie, you know, like "The Last Angry Man," or I do not know, some legal movies or other.

Anyway, I am not going to pretend that this is going to be better than a movie, but I do think that, Ben, you will remember it a lot longer.

I know you are all very proud of your wife and your mother, and I am pleased to have you all here today.

With that, I am going to call on the gracious Senator Coons to chair the hearing and to make two introductions.

Senator COONS [presiding]. Thank you very much, Senator Schumer, Senator Grassley. Let me, if I might, just conclude the introductions for our panel today.

It is to me impressive that we have five such exceptional nominees with a wealth of experience, and I applaud my colleagues for making progress in continuing to fill the vacancies in our Federal judiciary. We do have 61 current vacancies, and although we have made progress in the past few months, we still have much work to do. Seven percent of the Federal bench remains vacant, and this is an important step toward filling those vacancies.

Today's nomination hearing is also a key step toward making our Federal judiciary more diverse. This is the first all-female judicial nomination hearing in over a decade and the first such hearing ever with five female nominees. Let me, if I might, continue to introduce the remaining two nominees for today.

Patricia McCarthy, a nominee to the United States Court of Federal Claims, and since 1994, Patricia has served in the Commercial Litigation Branch of the Civil Division of the United States Department of Justice, where she currently serves as Assistant Director. Prior to Government service, Ms. McCarthy worked as an associate at Bingham, Dana and Gould in Boston from 1989 to 1994. Born in Medford, Massachusetts, she received her B.A. cum laude from Colby College and her J.D. from Cornell Law School, about which we have already heard a great deal.

[Laughter.]

Senator COONS. Our last nominee today is Jeri Kaylene Somers, who is nominated to the United States Court of Federal Claims. Since 2008, Judge Somers has been Vice Chair of the United States Civilian Board of Contract Appeals where she formerly served as a board judge. She is also currently a lecturer in law at George Washington University Law School. For the first 21 years of her legal career, she also served as a judge advocate and a military judge in the United States Air Force. Born in Wichita, Kansas, Judge Somers earned her B.A. from George Mason University and earned her J.D. from the American University Washington College of Law.

Now, by prior agreement, we will move now to nominee Pamela Harris for the Fourth Circuit Court of Appeals. Ms. Harris, if you will come forward and, following the tradition of this Committee, be sworn.

Please stand and raise your right hand. Do you solemnly swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. HARRIS. I do.

Senator COONS. Thank you. Let the record show the nominee has answered in the affirmative. Please be seated.

I would now like to invite you, Ms. Harris, to give an opening statement and feel free to recognize loved ones and supporters who may be with you today as well.

**STATEMENT OF PAMELA HARRIS, NOMINEE TO
BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT**

Ms. HARRIS. Thank you, Senator Coons, and thank you for chairing this hearing. I would like to thank Chairman Leahy and Ranking Member Grassley and the entire Committee for its consideration. It is a great honor for me to be here today, and I appreciate it.

I also would like to thank Senator Mikulski and Senator Cardin for their exceptionally kind introductions and for their support.

And, finally, I would like to thank my family and my friends who are here today, and if I may just briefly introduce my family.

Senator COONS. Please.

Ms. HARRIS. I have my cousin, Lauren Kline, with her husband, Andrew, and daughter, Becca. Lauren is just a few years older than me, but that is old enough to make her the matriarch of our family. So she is here also representing my entire extended family.

I also have my brother, Geoffrey Harris, and my two sisters, Elizabeth Harris and Tiffany Harris. And as has been mentioned already, all three of them are lawyers as well because all of us followed in the footsteps of my mother, Ellen Harris, who went to school at night to become a lawyer and then did become a lawyer while she was raising the four of us as a single parent. Her dedication and her integrity as a lawyer were an inspiration, and I know that she would be very proud of us today.

Finally, I have my husband, Austin Schlick, and my two children: Henry, who is 15, and Ellen, who is 13. My family is the joy of my life, and I am very happy that they are here today.

And, with that, I am very happy to answer your questions.

[The biographical information of Ms. Harris appears as a submission for the record.]

Senator COONS. Thank you very much, Ms. Harris. We will begin with 5-minute rounds.

First, would you just start by describing for us your judicial philosophy?

Ms. HARRIS. Senator, I do not have an overarching judicial philosophy. I believe that the role of a judge is to decide cases through impartial application of law and precedent. It is a limited role. Judges do not make law. But it is an important role. What they do is they decide the concrete disputes in front of them with attention to particular facts, attention to the arguments of the parties and their briefs, and, again, by applying law and precedent to those facts. And that is the only philosophy I would take with me if I were confirmed.

Senator COONS. You have had a distinguished career, as mentioned by the two Senators who introduced you, as an appellate litigator, as an academic professor and scholar at three of our Nation's leading law schools, and you have helped to found and lead prominent law and policy organizations.

During your career you have been able to advocate for and publish your views on a very wide range of legal issues. If confirmed to the Fourth Circuit, how would your prior advocacy influence your judging?

Ms. HARRIS. It would not, Senator. I understand these as being very, very different roles. I think that as an advocate, your position

is essentially given to you. You start with a position that benefits your clients, and then from there you develop the best, reasonable legal arguments that can be made on your client's behalf.

I think as a judge the role is entirely different. You start with neutral, careful, fair consideration of the law, and then you apply it to the facts in front of you without regard to how it affects any particular party. So I do think of them as very different roles.

Senator COONS. And I would agree. Over the course of your private practice, you have helped to defend a wide range of issues in your advocacy, for example, compulsory arbitration agreements in the employment context. You have argued on behalf of Mobil Corporation, plaintiffs injured by Mobil-produced asbestos ought not to be able to pursue their claims through mass adjudication. These positions are quite in contrast to some of the other advocacy organizations you have been involved in. But I would wager that you are able to resolve that tension in some way going forward.

Would you help us understand how you would distinguish between positions taken on behalf of clients and positions taken on behalf of policy organizations, and how you would view different sources as you move toward being a judge?

Ms. HARRIS. Senator, with respect to my representations of clients when I was at O'Melveny and Myers, where I worked for 10 years as an appellate and Supreme Court litigator, I took positions based on what was best for my client, and that was true whether they were some of the corporate and business interests you have identified, whether they were indigent individuals, organizational pro bono clients. I took those positions without regard to any personal views I might have had on the matter.

I think the through line there is that, of course, as a judge I would fairly and impartially apply precedent, again, without regard to any personal views I might have on any matter, and without regard to any advocacy positions I might have taken on behalf of clients.

Senator COONS. Thank you.

While in private practice, you did establish an admirable cooperative program between O'Melveny and Myers and the Maryland Office of the Public Defender, through which the firm provides pro bono appellate representation to indigent defendants in Maryland State court.

What led you to do that? And what role do you think judges broadly should have in ensuring access to justice?

Ms. HARRIS. Senator, access to justice has been an animating value of my entire career. I just think the appellate process works best and appellate judges depend on vigorous advocacy on both sides of the issue. The whole system depends on the idea that the best arguments will be put forward on both sides of the argument regardless of a client's ability to pay and regardless of any other issues.

I was happy to help found that partnership with the Maryland Public Defender's Office, in part because Maryland is my home State and I was always looking for ways to contribute in Maryland, and in part because I believe so deeply in this value that people must be represented before the courts because that is how the courts work best.

Senator COONS. A last question, if I might. You have spoken publicly and litigated cases that advanced the cause of diversity, in particular diversity in education. Speak a bit, if you would, about your views on the importance of diversity in the Federal bench as well and how you think that impacts the functioning of the judicial system and access to justice.

Ms. HARRIS. I think as a general matter, if the courts broadly reflect the diversity of the litigants who come before them, that is good for the courts. I think it helps encourage public confidence in the courts. It helps a sense of legitimacy about the courts.

I also think that having a broad range of judges can provide valuable role models for young students—I see this all the time with my own law students—for other young people considering professional careers.

Senator COONS. Thank you very much, Ms. Harris, for your answer.

Senator Grassley.

Senator GRASSLEY. I am well aware of the answers to your first two or three questions of Senator Coons, and I respect that answer. I think my line of questioning will be along the lines of some things you have said in the past and how they seem to be inconsistent with your view of judging.

In a Washington Post article on same-sex marriage issues, you are quoted as saying, “Justice Kennedy should be changing the same way the whole country is changing”—regarding same-sex marriage.

First question: Why do you believe a Supreme Court Justice should change his or her views and, therefore, judicial interpretation based upon public sentiment if we have a judiciary that is supposed to do what you just said, apply precedent and fact to deciding the case?

Ms. HARRIS. Senator, thank you for that question. I am happy to have an opportunity to clarify. That was a comment I made to a journalist. I am often asked as a Supreme Court litigator to sort of opine and speculate about issues before the Court.

I would never suggest that a Justice of the Supreme Court or any judge should change his or her opinions based on public opinion. That is not the way I view the role of a judge. I am confident it is not the way Justice Kennedy views his role or any other judge views his or her role.

When we talk as commentators about the individual views of Justices, we are usually talking about their written record as it has developed through their majority opinions, their separate writings. And what I was doing in that comment is likely I had been talking about Justice Kennedy’s distinct record on issues involving classifications based on sexual orientation and predicting where those legal views might bring him in future cases.

Senator GRASSLEY. Okay. In the same interview, you also stated that you thought “the tide of history is going one way,” and that you did not think that—well that is the end of that part of the quote—and that you did not think that the Justices “wanted to be on the wrong side of that.”

Do you believe it is appropriate for a judge to consider which “side of history” their judicial interpretation should be?

Ms. HARRIS. Again, no, Senator, I do not. And I did not mean to suggest that. I think there is another sentence in the article that makes clear, the context makes clear that what I was talking about was a notion of judicial restraint that courts, the Supreme Court, might want to be especially cautious on social issues when the political branches and political institutions sort of deeply and rapidly engaged in those issues, that the courts might want to take small steps, not take big steps, and leave as much as possible to the democratic process.

Senator GRASSLEY. In 2013, you moderated a panel on the Supreme Court's upcoming term during which you said, "The Constitution evolves. It has to keep pace with changes in the factual predicates. And, yes, our readings of constitutional provisions ought to change and evolve in light of circumstances on the ground like that."

Before I ask a question, I would like to say that you have been very clear on your views of the Constitution. We know where you stand. But I would like to know how you intend to decide what changed particular societal circumstances you will consider, if confirmed.

Let me say it this way: It is clear from your writings and speeches that you are talking about shifting public opinion rather than simply technological advances. For example, in the introduction of a book, "It Is a Constitution We Are Expounding," you wrote, "Justice Brennan explores the importance of the judge's obligation to speak for the community, the current community, in interpreting the Constitution." You have also discussed what you call "constitutional legitimacy coming from social movements." The problem with this view is that it tends—or it leads to a judge's imposing personal views into cases. Justice Scalia expressed it this way well in dissent regarding the Eighth Amendment, writing, "Of course, the risk of assessing evolving standards is that it is all too easy to believe that evolution has culminated in one's own views."

Once you start considering shifting public opinion, you are essentially reducing constitutional interpretation to public poll. So assuming you will interpret the Constitution in a way that all of your writing suggests—and I know the answers to Senator Coons suggest otherwise—how do you intend to guard against imposing your own views as opposed to what you view as shifting public opinion?

Ms. HARRIS. Senator, let me start by saying that as a Supreme Court litigator and appellate litigator, as someone who has specialized in preparing other advocates for their arguments before the Court, I always have been keenly aware of the boundaries of judicial decisionmaking. And as a litigator, every argument I ever advanced took as its starting point the methodologies that have been used by the Supreme Court and the lower courts and the methodologies that have been approved by those courts. That is how I have conducted my career.

In terms of some of the other comments you have raised, I do not believe that it is the view of a judge ever to import his or her own personal values into judicial decisionmaking. In cases in which the Court has looked to things, to social conditions, things like that, what the Court—and, again, I would follow the Court's precedent on this. What they have looked to is objective indicia of such

things. They have looked to State laws. They have looked at common law. They have looked at practices in the States. I am aware of no account of legitimate judicial decisionmaking that has judges either taking public opinion polls or using their own personal preferences to decide cases.

Senator GRASSLEY. My time is up. I would submit some more questions for answer in writing.

Ms. HARRIS. Of course.

Senator GRASSLEY. I would appreciate a response, and sometimes if you raise questions with your answers to us, sometimes we followup. So do not expect—or, I mean, expect some questions.

Ms. HARRIS. Of course, Senator.

[The questions of Ranking Member Grassley appears as a submission for the record.]

Senator GRASSLEY. Thank you.

Senator COONS. Thank you, Senator Grassley.

Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank you for your service in the past, and your willingness to do it in the future, and thanks to your family as well for supporting you.

You have an extraordinary career, a career of distinction and dedication to public service. And with anyone who has served or written or done things over the course of public life, obviously there are things that you can say could be misinterpreted, could be interpreted in different ways. And I would like to ask you about one point in particular. In your questionnaire to the Committee, you submitted letters that you sent in support of President Bush's, George Bush's judicial nominees: Judge Brett Kavanaugh for the United States Court of Appeals for the District of Columbia Circuit and Judge Neil Gorsuch for the Tenth Circuit. And in one of those letters, you stated that you are sometimes in disagreement with Judge Gorsuch on political matters, and I assume the same could be said of Judge Kavanaugh.

Ms. HARRIS. Yes, it could.

Senator BLUMENTHAL. And given those opposing views on political issues—and some on this panel may disagree with you on some political issues—what led you to support them as nominees to the court of appeals?

Ms. HARRIS. Senator, I supported them as nominees because I think judging has nothing to do with politics. I was very confident that both of those nominees would put to one side any political views they might have in judging the issues that came before them and that they would approach those issues with an open mind, impartially, and base their rulings on law and precedent. I do not think politics are relevant. I would do exactly the same thing if I were confirmed that I was so sure those two nominees would do.

Senator BLUMENTHAL. And that is really one of the key points here, is it not? That a nominee's past political views ought not to shape his or her service on the court and ought not determine the outcome of our decisions here, because we want to look to the qualifications and the willingness of a nominee to put those past views aside. And I believe that you would. That would certainly be your goal.

Ms. HARRIS. Yes, Senator, that is right. As a litigator for so many years in private practice, I always had full confidence, when I came to a court, that those judges would be deciding the cases on the law, that they would approach the briefs and arguments with an open mind, fairly and impartially. It is the cornerstone of the system, and I would be honored to do the same if I were confirmed.

Senator BLUMENTHAL. And you have been a prolific writer going back to your days on the Yale Daily News.

Ms. HARRIS. Yes.

Senator BLUMENTHAL. Some of us regret what we may have written on school newspapers in the past when it is presented to us years or decades later. But I assume that you would follow the law and attempt to conform your views to what the U.S. Supreme Court says the law is.

Ms. HARRIS. Senator, I would conform my views to what the U.S. Supreme Court says the law is.

Senator BLUMENTHAL. Tell me, in the short time I have remaining, the Georgetown University Law Center's Supreme Court Institute, which you have headed, is a real resource for anyone who advocates before the Supreme Court. I do not think I have ever used it, but I have heard a lot of great things about it. As executive director of the institute, how did you determine who participates in the program?

Ms. HARRIS. Senator, the institute runs on a strictly nonpartisan basis, on a first-come/first-served basis. We prepare advocates for their arguments before the Supreme Court without regard to the position being taken, without regard to the nature of the client.

The commitment really is to the appellate process, to ensuring that the best legal arguments are presented on either side of the issue to the Supreme Court.

Senator BLUMENTHAL. And one reason why that is important is that the courts make better decisions when both sides are represented ably. Is that—

Ms. HARRIS. That is the entire value behind the Supreme Court Institute, that it is a matter of assisting the Court by ensuring that the best possible legal arguments are presented.

Senator BLUMENTHAL. And your goal, one of your goals, to the extent that you are able to do so, I hope would be to assure that both sides of an argument are represented ably before your court.

Ms. HARRIS. Absolutely, Senator.

Senator BLUMENTHAL. Thank you.

Ms. HARRIS. And I would give full and careful respect to both sides as they represent it.

Senator BLUMENTHAL. Thank you. I appreciate your very helpful answers to my questions. My time has expired.

Ms. HARRIS. Thank you.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Blumenthal. And Senator Blumenthal is going to take over chairing while I run to cast a first vote, and we are going to do a little back-and-forth on that.

If I might, before I turn to Senator Cruz, I just wanted to make sure that we have introduced for the record letters submitted to the Committee in support of Ms. Harris' nomination. These are letters—there is one from former law firm partners, one from profes-

sional colleagues, classmates, from the Leadership Conference on Civil and Human Rights and the National Women's Law Center. I will just note that across them they praise you for your professionalism, grace, collegiality, your humble and down-to-earth approach. Signers of these letters span the ideological gamut and include A.B. Culvahouse, former White House Counsel to President Reagan; Cailley Balak, former Chief Counsel and Staff Director of the Permanent Subcommittee for Investigations, who worked for Senator Collins; Brian Boyle, who previously served President Bush; Ted Kassinger, who served in the Bush administration; and Greg Garre, Solicitor General in the Bush administration.

And if I might quote from your former law partners at O'Melveny, "Some of us have served in Republican administrations or worked for Republican Senators. Others have served in Democratic administrations or worked for Democratic Senators. Some of us are members of the Federalist Society while others members of the American Constitution Society. We may not all share Pam's views on a range of legal and political issues, but we are united in the belief that she possesses the intellect, fair-mindedness, humility, and decency to make an excellent Federal judge."

With that, Senator CRUZ.

Senator CRUZ. Thank you, Mr. Chairman.

Professor HARRIS. Good morning. Welcome.

Ms. HARRIS. Thank you.

Senator CRUZ. In a couple of sentences, how would you define "judicial activism"?

Ms. HARRIS. Senator, I think that can mean different things to different people. I would define "judicial activism" as a judge who allows his or her personal views to color decisions made as a judge, and perhaps also as a judge who goes beyond the facts of a case or further than necessary to decide an issue.

Senator CRUZ. I agree with that definition, and I will confess I am troubled by some of the public comments you have made, so I would like to give you an opportunity to address them.

Ms. HARRIS. Thank you, Senator.

Senator CRUZ. In 2009, at an American Constitution Society panel, you described yourself as "a profoundly liberal person" who sees the Constitution as "a profoundly progressive document." And you went on to say, "I always feel unapologetically, you know, left to my own devices, my own best reading of the Constitution, it is pretty close to where I am."

Now, given the definition you have just given of "judicial activism," those public comments raise some concern. How would you respond to those concerns?

Ms. HARRIS. Well, Senator, I would respond first, I think, by pointing to my entire professional career where, as a Supreme Court and appellate advocate at O'Melveny and Myers, running the Supreme Court Institute on an entirely nonpartisan basis, I have never let any personal views I have, political views I may have affect the discharge of my professional responsibilities. And I would not do that if I were confirmed as a judge.

With respect to those specific comments, if I can just give you a little bit of context, they came when I was arguing—basically arguing against audience members who thought that the Constitution

should be amended to address certain Supreme Court decisions that they found too conservative. And my point was that commitment to the Constitution actually ought to transcend that kind of political difference, and that that was not an appropriate reason for amending the Constitution. I described myself as “liberal” just as a matter of context to suggest that even though I might share some of their political commitments, I did not believe the Constitution should be amended for that reason, and that I did believe commitment to the Constitution transcends politics.

Senator CRUZ. Looking to those comments, is it a fair inference when you said that your best reading of the Constitution pretty much always conforms to your own personal political views, which you described as “profoundly liberal”? Do you agree with that statement?

Ms. HARRIS. Senator, only in the absolutely most broad sense in which I was using those terms in that comment. I do believe that the Constitution is committed to values that were very forward-thinking at the time, and this is what I meant by “progressive,” values like democracy, rule of law, equality, individual liberty. I think that is a very noncontroversial proposition, and that is all I was saying there.

Senator CRUZ. As I understand it, you have been committed to liberal values your whole life, which I commend you for the consistency. My understanding is in college, with respect to President Reagan, you said, “The greatest American nightmare of our time would be a second term for Ronald Reagan.” Do you still have that view?

Ms. HARRIS. Senator, I do not, and I am happy to have the chance to address those columns. You know, those columns were written 30 years ago as a college student. They represent what were then my very earnestly held, though somewhat uninformed views.

As I sit here before you, I cannot really accept them today. I am proud of my youthful passion. I deeply regret my tone. I think if you talk to people I have worked with over the last 20 years, they will tell you that I pride myself on my open-mindedness, my respect for people with whom I disagree. And in knowing what it is I do not know, to the extent that my early columns do not reflect that, I regret that.

Senator CRUZ. Well, I appreciate your comments clarifying that.

Let me ask an additional question. Also in 2009, you criticized liberals for believing that the Warren Court’s decisions were “as liberal as it gets,” and you responded, saying, “That is not right.” And you went on to say, “We have stunted the spectrum of legal thought in a way that removes the possibility that there could have been more progressive readings of the Fourth and Fifth Amendments.”

Now, as you know, the reaction to the Warren Court criminal procedure rulings that were widely perceived to be creating loopholes and allowing dangerous criminals back onto the street was fairly dramatic, and it is unusual for judicial nominees to have taken a position suggesting that the Warren Court was not nearly liberal enough and it should have been more liberal. Is that your view? I want to understand what your view is on that question.

Ms. HARRIS. Senator, that is not my view, and it is also really not what I said. And, again, if I can just give you the context on that. I was responding on that panel to an argument that Justices perceived as liberal, like Chief Justice Warren, had never—and I think the phrase was “had never felt the pain of reaching a constitutional decision that disagreed with liberal views.” And the only point I was making was that several of Chief Justice Warren’s criminal procedure decisions had not, in fact, adopted what was being presented as the liberal view. And I believe I talked about the *Terry* case, and that was the only point I was making, that sometimes people assume that because Chief Justice Warren wrote an opinion, it must have been terribly liberal. I was simply pointing out that in the criminal procedure context, Chief Justice Warren wrote opinions that did not adopt what was being advanced as the most pro-defendant or liberal position. It is just a descriptive point about certain criminal procedure decisions.

Senator CRUZ. Well, thank you for being here and answering the questions. My time has expired.

Senator BLUMENTHAL [presiding]. Thank you, Senator Cruz. I think that completes our hearing. Thank you very, very much, Ms. Harris, for being with us today.

Ms. HARRIS. Thank you, Senator.

Senator BLUMENTHAL. I think we have another panel.

I would like to call up the next panel, who are: Pamela Pepper, Brenda Sannes, Patricia McCarthy, and Jeri Kaylene Somers. If you would come forward and you have name identifications on the desk.

If you would please stand and be sworn. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge PEPPER. I do.

Ms. SANNES. I do.

Ms. MCCARTHY. I do.

Judge SOMERS. I do.

Senator BLUMENTHAL. Thank you. We are in the middle of a vote, which is reflected by the lack of attendance right now, and Senator Coons will be coming back shortly. But if you would like to do so, perhaps you could begin with your opening statements, identifying the family members who are with you, and saying anything you would like to say by way of introduction. Judge Pepper.

**STATEMENT OF HON. PAMELA PEPPER, NOMINEE TO BE
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WISCONSIN**

Judge PEPPER. Thank you, Senator Blumenthal. First of all, I would like to thank Senators Baldwin and Johnson who spoke earlier. Not only I but many people in the legal community in Wisconsin are very grateful for their bipartisan efforts to present judicial nominees to this Committee, and I wanted to express my gratitude for that, as well as to you and the Members of the Judiciary Committee for scheduling this hearing and for allowing us to testify. I would also like to thank the President for his nomination.

There are a number of people who could not be here today. My parents, Bruce and Beverly Pepper, and my aunt and uncle, Tom and Fay Cook, are not with us today because jointly they are in an

effort to get my 18-year-old niece, Sophie, on her high school graduation trip to Paris. So there are machinations around plane trips and schedules and things like that, so that is what they are doing. My niece, Sasha, was also not able to be with us. My brother, Cliff, however, is here in the audience, and I am pleased to have him here as well.

Also not with us today are my courtroom deputy and my law clerk, Chris Roble and Emily Steadman. I could not do my job without them. They are watching via webcast back in Wisconsin, as are the clerk's officers of the bankruptcy court and the district court. I suspect there is food involved in that activity, and I am grateful to them for watching, many bankruptcy judge colleagues and friends also.

Here in the hearing room today, I am grateful to have a number of friends and family, some of my friends from the American Bankruptcy Institute: Ted Gavin, a member of the board of directors; Sam Giordano, executive director of that organization. I am grateful to them for being here today.

In addition, my friend Denise Neary, who is a senior litigation attorney with the Federal Judicial Center, which is responsible for educating the judges in the Federal system. They do a wonderful job. I am very grateful for their help and also for her being here.

My cousin, David Cook, with the Administrative Office of U.S. Courts; my judicial assistant Paula Macomber and her husband, Mac, have made the trip to be here. And I am grateful to Paula for all of her help.

And, finally, my son, Leland, who is seated just behind me, and his father, Jeff Hanewall, are here today, and I am very proud for them to be here.

Finally, I would like to acknowledge the judge for whom I clerked, Frank Johnson, Jr., who no longer is with us. I had the opportunity to learn what a great judge is by clerking for Judge Johnson, and I am grateful for that.

[The biographical information of Judge Pepper appears as a submission for the record.]

Senator BLUMENTHAL. Ms. Sannes.

STATEMENT OF BRENDA K. SANNES, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK

Ms. SANNES. Thank you. I would like to thank President Obama for the incredible honor of this nomination. I would like to thank Senator Schumer for recommending me to President Obama and for his gracious and kind remarks. Then I would like to thank Senator Blumenthal for chairing this hearing.

And I would like to introduce my family: my husband of 20 years, Steve Clymer. Steve is an accomplished lawyer and law professor who has inspired his colleagues and the hundreds of young lawyers who he has trained.

We have our three sons here today: Matthew, who just finished his freshman year at Cornell University; Samuel, who just finished his sophomore year in high school; and Benjamin, who, as Senator Schumer noted, is missing Movie Day. He has a half-day left of school before he finishes fifth grade.

My parents are watching via webcast in Billings, Montana. I would like to thank them. Their hard work in running small businesses in Billings put me through college and has given me a strong work ethic.

Finally, I would like to thank my mother-in-law, who is watching from Pasadena, California, for her love and support.

[The biographical information of Ms. Sannes appears as a submission for the record.]

Senator BLUMENTHAL. Thank you.

Ms. McCarthy.

**STATEMENT OF PATRICIA M. McCARTHY, NOMINEE
TO BE JUDGE OF THE COURT OF FEDERAL CLAIMS**

Ms. McCARTHY. Thank you, Senator. I would like to thank the Members of the Committee for convening this hearing and allowing me to participate.

First of all, I would like to thank President Obama for the incredible honor of nominating me to the Court of Federal Claims. It is a court in which I practiced for 20 years, and I am incredibly grateful to the President.

My family is here with us. We are local so we did not have to travel. My husband, David, is here, and my three daughters:

My oldest daughter, Isabelle, is 19, and she is home from her first year away at college. And as parents of firstborns know, probably it was more difficult for my husband and me than it was for her to be away, but she is back here for the summer.

My daughter Sarah is 16 years old, and she is a rising junior at the Lab School of Washington, which is an incredibly amazing and fantastic school here in the district.

My daughter Madeline is also 16 years old and a rising junior at the Lab School, and Madeline and Sarah are actually extremely close in age. Sarah is 28 minutes older, and she lords it over Madeline all the time.

Also here, people who have traveled, my mother has traveled from Massachusetts, Mary McCarthy, and her partner of more than 25 years and spouse of 10 years, Bonnie Winokar. My mother is a retired chemist, and Bonnie is a retired high school math teacher, and my daughters profit from her generous provision of free tutoring services via Skype and Google Chat.

My brother, Michael McCarthy, is also here from Boston, and my sister-in-law, Daphne Minner, could not be here. She is home at work at the Arnold Arboretum in Massachusetts.

My brother, Brian McCarthy, and sister-in-law, Tessa Cale, did make the trek from New York, and I am very grateful for them to be here.

There is one person I would like to mention who could not be with us, and that is my late father, Leonard McCarthy. He has been dead for several years. He actually died when I was in law school at the age that I am at now, which is not a terribly old age, and I obviously wish that he could be here. But I am joined by my friends and colleagues from the Department of Justice, and many are here in person, and others are watching—they are streaming, which is probably causing consternation to our Department of Jus-

tice IT Department, but maybe they will cut us some slack for this morning.

But I am truly grateful to the Committee for holding this hearing, and I welcome any questions, would be delighted to answer any questions you have.

[The biographical information of Ms. McCarthy appears as a submission for the record.]

Senator BLUMENTHAL. Thank you. We are going to have to take a brief recess—I do apologize—because Senator Coons is on his way back but is not yet here. So this Committee will stand in brief recess. It will just be a couple of moments, and I do apologize for the delay. Thank you.

[Whereupon, at 11:18 a.m., the Committee was recessed.]

[Whereupon, at 11:24 a.m., the Committee reconvened.]

Senator COONS [presiding]. I would like to return this hearing to order.

Ms. Somers, I believe you were on the verge of your opening comments, and I will comment, if I might, given that we have begun a series of four votes. I do not know whether other Members will return. I myself have to go back to cast a vote. You may be the luckiest judicial confirmation panel in history.

[Laughter.]

Senator COONS. And I know you have all prepared at great length for this very demanding confirmation today, but given the press of votes and the distance from here to the Capitol, we may end up submitting questions for the record.

Ms. Somers, let us proceed with you and see how we do.

**STATEMENT OF HON. JERI KAYLENE SOMERS, NOMINEE
TO BE JUDGE OF THE COURT OF FEDERAL CLAIMS**

Judge SOMERS. Thank you, Senator Coons. Thank you so much to the Committee for convening this hearing. Thank you for the very kind comments that you made at the very beginning about me and my colleague. Thank you for President Obama's nomination. I am honored to be here.

I just wanted to introduce my family briefly and my friends. So behind me is my father, Christopher Somers. He is a retired Air Force colonel, having gone through the ranks of the lowest enlisted to colonel. He came here from Jamaica, and after graduating from—I mean, after retiring from the Air Force, he went to law school and is now a practicing attorney.

My mom, Jacqueline Somers, is also here. She recently retired from being a neonatal nurse. She was born in Chicago but grew up in the town that President Obama's grandparents are from, a small town in Kansas.

My daughter, Kristen Somers, is here. She is a rising senior and goes to Yorktown High School and plays lacrosse and does lots of other teenage activities. Her friend, Scarlett Cruz, is also here to support me.

My boss, Chairman Daniels, of the Civilian Board of Contract Appeals is here. He has always been a strong supporter, and despite the fact that he does not want me to leave, he is here giving me all the support he can.

My friend Tamara Ashford, who is the Assistant Attorney General for Appellate Tax and also a tax court nominee, is here to support me, as well as two of my friends from my neighborhood running group, Hot Lava, Darla Gonson and Ellen Hemstreet.

With that, thank you so much for the opportunity to speak to the Committee.

[The biographical information of Judge Somers appears as a submission for the record.]

Senator COONS. Thank you, Ms. Somers. And as someone who has his own neighborhood running group, not with the nickname Hot Lava—

[Laughter.]

Senator COONS. Home in Wilmington, Delaware, that I ran with this morning, I understand the importance of friends and support, and, Colonel, welcome. Clearly both your parents led you to a career of great success and service, public service.

Let me, to all four of the nominees, thank you for your willingness to serve. Thank you for your preparation for this hearing, and thank your friends and your family for supporting you through this process.

I would like each of you, if you could, in series, to simply answer the question: Describe your judicial philosophy, and how will the experiences you have had in public service or in legal service, or both, how have they prepared you for the judicial position to which you have been nominated? Judge Pepper.

Judge PEPPER. Thank you, Senator Coons. My judicial philosophy, I suppose, is first a description of what I perceive to be the role of a good judge, and that is, to be a neutral party who applies the law to the facts, who is responsible for determining what the appropriate law should be, and then listening carefully to each side and giving fair weight to each side's arguments before making a determination.

I suppose that is a description of a role, and so I would add to that my own philosophical gloss, which is the importance of giving each side or every party the opportunity to be fully heard and to know that they were fully heard before rendering a decision, as well as to explain as clearly as I can the basis for that decision.

Senator COONS. Thank you.

Ms. Sannes.

Ms. SANNES. Yes, I agree with Judge Pepper's views of judicial philosophy. As a litigator for the past 25 years in Federal court and appellate court, I understand the importance of appearing before judges who are fair, impartial, open-minded, and will follow the law. And if fortunate enough to be confirmed, I would aspire to be that as a judge.

For the last 8 years, I have done appellate work, and I think my experience doing appellate work has given me a lot of training in the proper way to have a district court record, in trying to prevent—make sure the facts are developed well and make sure that the record is as solid as possible so it can be upheld on appeal.

Senator COONS. Ms. McCarthy.

Ms. MCCARTHY. Thank you, Senator. I concur with the statements of my co-panelists, but I would also like to add that I, in my 20 years at the Department of Justice, have had the privilege of

practicing not only in the Court of Federal Claims but also in the Court of International Trade and the Court of Appeals for the Federal Circuit. So I think I have an overview of the national court system and the adversarial system that Congress devised for the resolution of claims against the United States. And I think I have an insight as to the importance of having a fair and impartial decision so that litigants who come to the court with claims against the Government understand the rulings and respect the rulings and feel that they have had their fair day in court.

Senator COONS. Agreed.

Ms. Somers. Judge Somers.

Judge SOMERS. Senator Coons, I do not really have much to add other than to say that I believe my philosophy is informed by my more than 21 years as a military officer, including as a military judge, my time at the Department of Justice, the U.S. Attorney's Office, and in the private sector as well as teaching young law students about the rule of law.

My philosophy is very focused on making sure that justice is given expeditiously but fairly so that parties have a chance to provide their analysis of their cases without me predetermining their answers and the response and the decision, and also taking the opportunity to try to ensure that decisions are rendered as quickly as possible.

Senator COONS. Thank you. I would like to thank all four of you. We have had five outstanding nominees today. Each of you has in your own way served our court system, served justice, served our Nation, and I do think it is absolutely essential that we continue to advance access to justice, diversity in our Federal judiciary, and excellence. And I think all of you have been strong nominees from those perspectives.

I am going to keep the record of this hearing open for a week, so as you heard from Senator Grassley before, there may be other Senators unable to attend due to the voting schedule who will submit questions for the record. In any event, I would like to join, I know, all of my colleagues in thanking your family and your friends for supporting you here today. Breathe a great sigh of relief.

With that, this confirmation hearing is adjourned.

[Whereupon, at 11:32 a.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Judicial Nominations”

Tuesday, June 24, 2014
Dirksen Senate Office Building, Room 226
10:30 a.m.

Panel I

Pamela Harris, to be a United States Circuit Judge for the Fourth Circuit

Panel II

Pamela Pepper, to be a United States District Judge for the Eastern District of Wisconsin

Brenda K. Sannes, to be a United States District Judge for the Northern District of New York

Patricia M. McCarthy, to be a Judge of the United States Court of Federal Claims

Jeri Kaylene Somers, to be a Judge of the United States Court of Federal Claims

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Pamela Ann Harris

2. **Position:** State the position for which you have been nominated.

Circuit Judge for the United States Court of Appeals for the Fourth Circuit

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001

Residence: Potomac, MD

4. **Birthplace:** State year and place of birth.

1962; Hartford, CT

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1987 – 1990, Yale Law School; J.D., 1990

1980 – 1983, 1984 – 1985, Yale College; B.A. (*summa cum laude*), 1985

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2012 – present, 2007 – 2010
Georgetown University Law Center
600 New Jersey Avenue, NW

Washington, DC 20001
 Visiting Professor (2012 – present, 2007 – 2010)
 Executive Director, Supreme Court Institute (2009 – 2010)

2010 – 2012
 United States Department of Justice
 Office of Legal Policy
 950 Pennsylvania Avenue, NW
 Washington, DC 20530
 Principal Deputy Assistant Attorney General

1999 – 2009
 O'Melveny & Myers LLP
 1625 I Street, NW
 Washington, DC 20006
 Of Counsel (2006 – 2009)
 Partner (2005 – 2006)
 Counsel (1999 – 2004)

1996 – 1999
 University of Pennsylvania Law School
 3501 Sansom Street
 Philadelphia, PA 19104
 Associate Professor

1994 – 1996
 United States Department of Justice
 Office of Legal Counsel
 950 Pennsylvania Avenue, NW
 Washington, DC 20530
 Attorney-Advisor

1992 – 1993
 Associate Justice John Paul Stevens
 Supreme Court of the United States
 One First Street, NE
 Washington, DC 20543
 Law Clerk

September 1991 – June 1992
 Shea & Gardner (now Goodwin Procter LLP)
 901 New York Avenue, NW
 Washington, DC 20001
 Associate

1990 – 1991

Judge Harry T. Edwards
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue, NW
Washington, DC 20001
Law Clerk

Summer 1990

Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
Summer Associate

Summer 1989

Onek, Klein & Farr (no longer in existence)
Washington, DC
Summer Associate

September 1988 – May 1989

Yale Law School
127 Wall Street
New Haven, CT 06511
Research Assistant for Professor Paul Gewirtz

Summer 1988

Public Citizen Congress Watch
215 Pennsylvania Avenue SE
Washington, DC 20003
Summer Associate

January – May 1988

Yale University
New Haven, CT 06520
Teaching Assistant for Professor Jonathan Rieder

Summer 1987

Temps & Co. (no longer in existence)
Washington, DC
Temporary Secretary

1986 – 1987

Council on Financial Competition (now The Advisory Board Company)
2445 M Street, NW
Washington, DC 20037
Research Associate

Other Affiliations (uncompensated):

2013 – present
 Georgetown University Law Center
 Supreme Court Institute
 600 New Jersey Avenue, NW
 Washington, DC 20001
 Senior Advisor

2012 – present
 Constitutional Accountability Center
 1200 18th Street, NW
 Suite 501
 Washington, DC 20036
 Board of Directors

2009 – present
 Norwood School
 8821 River Road
 Bethesda, MD 20817
 Board of Trustees

2007 – 2009
 Harvard Law School
 1563 Massachusetts Avenue
 Boston, MA 02138
 Lecturer and Co-Director, Supreme Court and Appellate Practice Clinic
 (on behalf of and in the employ of O'Melveny & Myers)

2001 – 2008
 American Constitution Society for Law and Policy
 1333 H Street, NW
 11th Floor
 Washington, DC 20005
 Board of Directors

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Harvey Levin Memorial Teaching Award, University of Pennsylvania Law School (1998)

Yale Law & Policy Review, Current Topics Editor (1988 – 1990)

Yale Undergraduate Forum undergraduate essay prize (1985)

Phi Beta Kappa (1985)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Inns of Court, Edward Coke Appellate Inn of Court (2010 – 2013)

National Association of Attorneys General (2004, 2006, 2009)

Served on panel evaluating Attorney General briefs for best brief awards.

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania, 1992

District of Columbia, 1994

There have been no lapses in my District of Columbia bar membership, though my membership was inactive for a period between 1996 and 1999 while I was serving as a professor and not practicing law. I did not renew my membership in the Pennsylvania bar in 2010 because I have not lived in Pennsylvania in years. I had previously been inactive since 1995.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2000

United States Court of Appeals for the Sixth Circuit, 2005

United States Court of Appeals for the Seventh Circuit, 2006

United States Court of Appeals for the Tenth Circuit, 2003

There have been no lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

American Constitution Society for Law and Policy (2001 – present)
 Board of Directors (2001 – 2008)
 Co-Chair, Constitutional Interpretation and Change Issue Group (2005)
 Co-Chair, Board Development Committee (2004 – 2005)
 Chair, Board Development Committee (2003)

Constitutional Accountability Center (2012 – present)
 Board of Directors

National Association of Criminal Defense Lawyers (2004 – 2009)
 Member and Co-Chair, Amicus Committee (pursuant to pro bono representation at O'Melveny & Myers)

Norwood School (Bethesda, MD) (2009 – present)
 Board of Trustees
 Chair, Medical Committee (2012 – present)

Yale Law School Class of 1990 (2010)
 20th Reunion Co-Chair

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor,

editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Mad Men: A Conversation, Speakeasy, The Wall St. Journal blog, Apr. – June 2013 (with Alan Brinkley, Walter Dellinger, Pam Karlan and Evangeline Morphos). Copies supplied.

United States of America – Supreme Court October Term 2009 Overview, in Public Law, International Survey 2010 (Richard Comes, editor) (with Vicki Jackson). Copy supplied.

Pleasant Grove v. Summum and the Establishment Clause: Giving with One Hand, Taking with the Other?, 46 Willamette Law Rev. 677 (2010). Copy supplied.

The Importance of Stevens' Good Manners, SCOTUSBlog, Apr. 26, 2010. Copy supplied.

Justice Stevens and Religious Diversity, National Law Journal blog on Justice Stevens, Apr. 12, 2010. Copy supplied.

Criminal Procedure: An Undervalued Part of Stevens' Legacy and More on Stevens and His Style on the Bench, National Law Journal blog on Justice Stevens, Apr. 9, 2010. Copies supplied.

Georgetown Supreme Court Institute Seeking Deputy Director, SCOTUSBlog, June 15, 2010. Copy supplied.

Editor, It Is a Constitution We Are Expounding: Collected Writings on Interpreting Our Founding Document, American Constitution Society for Law and Policy, 2009 (with Karl Thompson). Copy supplied.

Supreme Court Preview: Abortion and the "Health Exception," ACSblog, Feb. 20, 2007 (with Dawn Johnsen). Copy supplied.

What O'Connor's Retirement Means for Reproductive Liberty, ACSblog, July 5, 2005 (with Dawn Johnsen). Copy supplied.

The Football Prayer Debate, Long Beach Press-Telegram (reprint), Apr. 5, 2000 (with Walter Dellinger). Copy supplied.

The Big Chill and Return of the Secaucus Seven: Relative Distances, Ideological Functions, and Utopian Potentials, Yale Undergraduate Forum, Spring 1985. Copy supplied.

Glimpses of a Rally, Yale Daily News, Nov. 18, 1983. Copy supplied.

Passing the Activist Torch, Yale Daily News, Oct. 11, 1983. Copy supplied.

McGovern's Bid, Yale Daily News, Sept. 27, 1983. Copy supplied.

This March Was Different, Yale Daily News, Sept. 14, 1983. Copy supplied.

Gays in a Hostile World, Yale Daily News, Apr. 18, 1983 (with David Halperin). Copy supplied.

Activism: While There's Time, Yale Daily News, Apr. 12, 1983 (with David Halperin). Copy supplied.

Improper Conduct, Yale Daily News, Apr. 5, 1983 (with David Halperin). Copy supplied.

Reagan: Once Is Too Much, Yale Daily News, Mar. 22, 1983 (with David Halperin). Copy available at:
<http://digital.library.yale.edu/cdm/compoundobject/collection/yale-ydn/id/200167/rec/10> (page 2).

The Mayor and the Mall, Yale Daily News, Mar. 1, 1983 (with David Halperin). Copy available at:
<http://digital.library.yale.edu/cdm/compoundobject/collection/yale-ydn/id/200130/rec/19> (page 2).

We Can't Live with First Use, Yale Daily News, Feb. 22, 1983 (with David Halperin). Copy available at:
<http://digital.library.yale.edu/cdm/compoundobject/collection/yale-ydn/id/199977/rec/12> (page 2).

Udall: Feeling Woe for Mo, Yale Daily News, Feb. 15, 1983 (with David Halperin). Copy supplied.

Student in a Snit with SNET, Yale Daily News, Feb. 8, 1983 (with David Halperin). Copy supplied.

Women on Shaky Ground, Yale Daily News, Feb. 1, 1983 (with David Halperin). Copy supplied.

Suzanne: Sex and Filth, Yale Daily News, Jan. 25, 1983 (with David Halperin). Copy supplied.

Remembering His Dream, Yale Daily News, Jan. 18, 1983 (with David Halperin). Copy supplied.

Career Tip: Don't Be a Corporate Lawyer, Yale Daily News, Jan. 11, 1983 (with David Halperin). Copy supplied.

Reliving Vietnam in Blood and Stone, Yale Daily News, Dec. 2, 1982 (with David Halperin). Copy available at:
<http://digital.library.yale.edu/cdm/compoundobject/collection/yale-ynid/198422/rec/31> (page 2).

Mistakes in El Salvador, Yale Daily News, Nov. 16, 1982 (with David Halperin). Copy supplied.

Public Education: Scapegoats and Real Reform, Yale Daily News, Nov. 9, 1982 (with David Halperin). Copy available at:
<http://digital.library.yale.edu/cdm/compoundobject/collection/yale-ynid/199121/rec/1> (page 2).

Voting By the Few, For the Few, Yale Daily News, Nov. 2, 1982 (with David Halperin). Copy supplied.

What Makes Us Grouchy, Yale Daily News, Oct. 26, 1982 (with David Halperin). Copy supplied.

Beyond the Nuclear Freeze: The Question of Proliferation, Yale Daily News, Oct. 14, 1982 (with David Halperin). Copy supplied.

Nancy Reagan in Little Rock: Desecrating a Fond Memory, Yale Daily News, Oct. 7, 1982 (with David Halperin). Copy available at:
<http://digital.library.yale.edu/cdm/compoundobject/collection/yale-ynid/199263/rec/15> (page 3).

The Muffled Voice of Conservatives at Yale, Yale Daily News, Sept. 28, 1982 (with David Halperin). Copy supplied.

Certified Lies about Salvador, Yale Daily News, Sept. 22, 1982 (with David Halperin). Copy available at:
<http://digital.library.yale.edu/cdm/compoundobject/collection/yale-ynid/199574/rec/35> (page 3).

A Gleam in the Eye of the Bulldog, Yale Daily News, Sept. 14, 1982 (with David Halperin). Copy supplied.

Defining the Left: Up From the Ashes, Yale Daily News, Sept. 8, 1982 (with David Halperin). Copy available at:
<http://digital.library.yale.edu/cdm/compoundobject/collection/yale-ynid/199491/rec/1> (page 2).

Letter to the Editor, Yale Daily News, Mar. 24, 1982 (“Frum and Subjective Interpretation”). Copy supplied.

Letter to the Editor, Yale Daily News, Apr. 15, 1981 (“Father Doesn’t Always Know Best”). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Supreme Court October Term 2010 Preview, report of the Supreme Court Institute, Georgetown University Law Center (Sept. 2010). Copy supplied.

Supreme Court October Term 2009 Preview, report of the Supreme Court Institute, Georgetown University Law Center (Sept. 2009). Copy supplied.

While I served on its Amicus Committee from 2004 to 2009, the National Association of Criminal Defense Lawyers compiled lists of amicus briefs submitted to the Supreme Court to which I may have contributed on occasion. Copies supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Joint Letter to the Senate Judiciary Committee of Former Office of Legal Counsel Attorneys in Support of the Confirmation of Nina Pillard as Circuit Judge, U.S. Court of Appeals for the District of Columbia Circuit (July 17, 2013). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Confirmation of Patricia Millett as Circuit Judge, U.S. Court of Appeals for the District of Columbia Circuit (July 2, 2013). Copy supplied.

Joint Letter of Faculty and Administrators to the Georgetown University Law Center Community in Support of Sandra Fluke (2012). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Confirmation of Sonia Sotomayor as Associate Justice, Supreme Court of the United States (Aug. 5, 2009). Copy supplied.

Letter to the Senate Judiciary Committee regarding the Department of Justice Honors Program and Summer Law Intern Program (July 9, 2008). Although, as a Board member, my name appeared on the letterhead, I did not sign the letter; and, to the best of my knowledge, I did not participate or consult in any way in its preparation, and the Board was never asked to vote on or approve its contents. Copy supplied.

Letter to the Massachusetts Judicial Nominating Commission in Support of the Nomination of Peter Rubin to the Massachusetts Supreme Judicial Court (June 18, 2007). Copy supplied.

Letter to the Clerk of the United States Supreme Court, Comments of the National Association of Criminal Defense Lawyers on Proposed Amendments to the Rules of the Supreme Court (June 4, 2007). Copy supplied.

Letter to Senator Specter in Support of the Confirmation of Neil Gorsuch as Circuit Judge, U.S. Court of Appeals for the Tenth Circuit (June 2006). Copy (unsigned) supplied.

Joint Statement of Principles to Guide the Office of Legal Counsel (Dec. 21, 2004). Copy supplied.

Letter to Senator Hatch in Support of the Confirmation of Brett Kavanaugh as Circuit Judge, U.S. Court of Appeals for the District of Columbia Circuit (Apr. 27, 2004). Copy supplied. Quotations from the letter appeared in multiple media sources, though I was not interviewed for those stories.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list reflects my best efforts to identify the speeches or talks that I have delivered. I have provided representative press coverage where available. To compile the list, I consulted my own files and Internet sources. There may, however, have been other speeches or talks that I have been unable to recall or identify, and I have spoken occasionally at minor events for which I did not retain any record.

September 23, 2013: Panelist, "Anticipating the Supreme Court's October Term 2013," Supreme Court Institute, Georgetown University Law Center, Washington,

DC. Press coverage supplied and video available at:
<http://apps.law.georgetown.edu/webcasts/eventDetail.cfm?eventID=2107>.

September 19, 2013: Panelist, "Supreme Court 2013 Term Preview and Pizza Lunch," Supreme Court Institute, Georgetown University Law Center, Washington, DC. This was an event for students at which Georgetown professors spoke about upcoming Supreme Court cases. My recollection is that I focused on the case of *Town of Greece v. Galloway*, involving legislative prayer. I have no notes, transcript or recording. The address of the Supreme Court Institute is Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001.

September 16, 2013: Moderator, "Supreme Court 2013 – 2014 Term Preview," American Constitution Society, Washington, DC. Press coverage supplied and video available at: <http://www.c-span.org/video/?315036-1/supreme-court-20132014-term-preview>.

July 10, 2013: Moot court judge, summer associate program, O'Melveny & Myers, Washington, DC. I participated as a moot court judge for summer associates arguing a fictional case. I have no notes, transcript or recording. The address of O'Melveny & Myers is 1625 I Street, Washington, DC 20006.

June 17, 2013: Panelist, "Supreme Court Review/Preview," Justice at Stake, Washington, DC. Notes supplied.

February 27, 2013: Panelist, "Same-Sex Marriage Mock Moot Court: *Hollingsworth v. Perry*, No. 12-144," Supreme Court Institute, Georgetown University Law Center, Washington, DC. Video available at: <http://apps.law.georgetown.edu/webcasts/eventDetail.cfm?eventID=1970>.

September 20, 2012: Moderator, "The Supreme Court: Countdown to the First Monday in October," The Smithsonian Associates, Washington, DC. Notes supplied.

September 18, 2012: Panelist, "Anticipating the Supreme Court's October Term 2013: What to Expect," Supreme Court Institute, Georgetown University Law Center, Washington, DC. Press coverage supplied and video available at: <http://apps.law.georgetown.edu/webcasts/eventDetail.cfm?eventID=1812>.

July 12, 2012: Remarks at summer associate lunch, O'Melveny & Myers, Washington, DC. Notes supplied.

October 17, 2011: Speaker, "Finding the Roads That Lead to Rome: How to Build Your Own Exciting, Meaningful Legal Career," Yale Law Women and American Constitution Society, Yale Chapter, Yale Law School, New Haven, CT. I used the same notes supplied for the July 26, 2011 event.

October 17, 2011: Speaker, "Day in the Life" Series, Yale Law Women, Yale Law School, New Haven, CT. Notes supplied.

July 26, 2011: Speaker, "July Brown Bag Lunch," American Constitution Society, Washington, DC Lawyer Chapter, O'Melveny & Myers, Washington DC. Press coverage and notes supplied.

June 24, 2011: Remarks at summer associate lunch, O'Melveny & Myers, Washington, DC. I spoke over lunch to a group of summer associates about my career and, to the best of my recollection, focused on my work as a government lawyer. I have no notes, transcript or recording. The address of O'Melveny & Myers is 1625 I Street, NW, Washington, DC 20006.

April 28, 2011: Remarks to student members of the Barristers' Council Appellate Advocacy Division, Georgetown University Law Center, Washington, DC. To the best of my recollection, I spoke about my career in appellate litigation. I have no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

December 3, 2010: Panelist, "Supreme Court Preview," District of Columbia Superior Court, Washington, DC. This panel discussed upcoming Supreme Court cases. I have no notes, transcript or recording. The address of the District of Columbia Superior Court is 500 Indiana Avenue, Washington, DC 20001.

October 2010: Remarks at the Office of Legal Policy, Department of Justice. Before I began work at Office of Legal Policy, I attended a brown-bag lunch and spoke informally about the Supreme Court's upcoming Term. Notes supplied.

October 8, 2010: Moderator, "The Finest Legal Mind, a Symposium in Celebration of Justice John Paul Stevens," Georgetown University Law Center, Washington, DC. Press coverage supplied and video available at: <http://www.c-spanvideo.org/program/295896-2>.

September 27, 2010: Speaker, "ACS 2010 Supreme Court Preview," American Constitution Society, Georgetown Law Center Chapter, Washington, DC. With Professor Marty Lederman, I spoke at this informal brown-bag lunch about the upcoming Supreme Court Term. I have no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

September 20, 2010: Moderator, "Anticipating the Supreme Court's October Term 2010: What to Expect," Supreme Court Institute, Georgetown University Law Center, Washington, DC. Press coverage supplied and video available at: <http://apps.law.georgetown.edu/webcasts/eventDetail.cfm?eventID=1194>.

September 15, 2010: Speaker, "Lunch Discussion: The Supreme Court Term Ahead," American Constitution Society, Georgetown Law Center Chapter, Washington, DC. Along with Judge Peter Rubin, I spoke at this brown-bag lunch about cases in the upcoming Supreme Court Term. I have no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

August 28, 2010: Panelist, "Oral Argument Before Trial and Appellate Courts," Tenth Circuit Bench and Bar Conference, Colorado Springs, CO. Notes supplied.

July 7, 2010: Moot court judge, summer associate program, O'Melveny & Myers, Washington, DC. I participated as a moot court judge for summer associates arguing a fictional case. I have no notes, transcript or recording. The address of O'Melveny & Myers is 1625 I Street, Washington, DC 20006.

June 25, 2010: Moderator, "Supreme Court Term Review," North American South Asian Bar Association, Boston, MA. Notes supplied.

June 15, 2010: Panelist, Review of the Supreme Court's Term, Edward Coke Appellate Inn of Court, Washington, DC. Press coverage and notes supplied.

June 2010: Speaker, Street Law Supreme Court Summer Institute for Teachers, Washington, DC. Notes supplied.

May 18, 2010: Panelist, "Supreme Court Nominee Elena Kagan, the Senate Confirmation Process, and a Justice Kagan's Potential Impact on the Court," Supreme Court Institute, Georgetown University Law Center, Washington, DC. Press coverage supplied and video available at: <http://apps.law.georgetown.edu/webcasts/eventDetail.cfm?eventID=2289>.

April 29, 2010: Introductory Speaker, End-of-Term Reception Honoring Justice Kennedy, Supreme Court Institute, Georgetown University Law Center, Washington, DC. Press coverage and notes supplied.

April 16, 2010: Remarks on Supreme Court public interest litigation, Harvard Law School Immigration Project, Harvard Law School, Cambridge, MA. I spoke to students at Harvard Law School about my work at O'Melveny & Myers on behalf of public interest organizations. I have no notes, transcript or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, MA 02138.

April 8, 2010: Moderator, "Women and the Supreme Court Bar," Supreme Court Institute, Georgetown University Law Center, Washington, DC. Press coverage supplied and video available at: <http://www.c-span.org/video/?292899-1/women-supreme-court-bar>.

March 1, 2010: Moderator, "From the Cell to the Community: Issues in Prisoner Reentry," American Constitution Society, Georgetown Law Center Chapter, Washington, DC. As moderator, my primary role was to introduce the speakers and, as I recall, to facilitate a question-and-answer period. I have no notes, transcript or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

February 23, 2010: Moderator, "Post-Argument Discussion of *Holder v. Humanitarian Law Project*," Georgetown University Law Center, Washington, DC. Video supplied.

January 26, 2010: Moderator, "State Courts and U.S. Supreme Court Rulings: Will Caperton and Citizens United Change the Way States Pick Judges?," Aspen Institute, Georgetown University Law Center, Washington, DC. I moderated a panel regarding trends in selection of state judges, and my role was to introduce and ask questions of the panelists. I have no notes, transcript or recording. The address for the Aspen Institute is One Dupont Circle, NW, Washington, DC 20036.

December 2, 2009: Interviewer, book talk with Joan Biskupic, author of *American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia*, Supreme Court Institute, Georgetown University Law Center, Washington, DC. I introduced Ms. Biskupic and asked her questions about her book. I have no notes, transcript or recording, but press coverage is supplied. The address of the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

November 9, 2009: Moderator, "Is It Cruel and Unusual to Sentence a Child to Life Without the Possibility of Parole? The Supreme Court Hears *Sullivan v. Florida* and *Graham v. Florida*," Georgetown Juvenile Justice Clinic, Juvenile Indigent Defense Action Network, National Juvenile Defender Center, Georgetown Human Rights Institute, Georgetown Youth Advocacy, Georgetown Human Rights Action, and the Georgetown University Law Center chapters of Amnesty International, American Constitution Society, and American Civil Liberties Union, Georgetown University Law Center, Washington, DC. My role as moderator on this panel was to introduce the speakers and facilitate their discussion of the Supreme Court arguments in cases concerning life sentences for juveniles. I have no notes, transcript or recording. The address for Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

October 16, 2009: Panelist, "Symposium: The Future of the First Amendment," Willamette Center for Religion, Law and Democracy and American Constitution Society, Willamette University College of Law, Salem, OR. I have no notes, transcript or recording, but my remarks were based closely on an essay published in the Willamette Law Review, a copy of which has previously been supplied in response to 12a.

September 24, 2009: Panelist, "2009 Supreme Court Preview," American Constitution Society, Washington, DC. Press coverage supplied and video available at: <https://www.youtube.com/watch?v=wR1Dsila9kg>.

September 21, 2009: Moderator, "Annual Press Briefing on the Supreme Court Term," Supreme Court Institute, Georgetown University Law Center. Video available at: <http://apps.law.georgetown.edu/webcasts/eventDetail.cfm?eventID=890>.

September 3, 2009: Speaker, "Justice Scalia: Friend of Criminal Defendants?," Federalist Society, Georgetown Law Center Chapter, Washington, DC. Along with another professor, I discussed recent criminal procedure decisions authored by Justice Scalia. I have no notes, transcript or recording. The address for Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

August 27, 2009: Participant, faculty moot court for first-year orientation program, Georgetown University Law Center, Washington, DC. I played the role of a judge hearing argument, presented by other faculty members, in *United States v. Stevens*, 559 U.S. 460 (2010). I have no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

July 6, 2009: Panelist, "Sizing Up the 2008 – 2009 Supreme Court Term: A Practitioner's View," National Law Journal and Washington Legal Times, Georgetown University Law Center, Washington, DC. Transcript and press coverage supplied and video available at: <http://www.c-span.org/video/?287449-1/20082009-supreme-court-term>.

June 19, 2009: Panelist, "Keeping Faith with the Constitution," American Constitution Society, Washington, DC. Press coverage and video supplied.

June 3, 2009: Moderator, "President Obama's Nominee to the U.S. Supreme Court and the Confirmation Process," Supreme Court Institute, Georgetown University Law Center, Washington, DC. Video available at: <http://apps.law.georgetown.edu/webcasts/eventDetail.cfm?eventID=858>.

May 1, 2009: Panelist, "Book Discussion: 'Keeping Faith with the Constitution' and 'It Is a Constitution We are Expounding: Collected Writings on Interpreting Our Founding Document,'" American Constitution Society, Washington, DC. Video supplied.

December 5, 2008: Panelist, Appellate Advocacy Panel, Vermont Law School, South Royalton, VT. Notes supplied.

September 2008: Remarks, D.C. Law Students in Court, Criminal Division, Washington, DC. I spoke to a clinic class taught by Professors Geoffrey Harris and Moses Cook about preservation of trial issues for appeal. I have no notes, transcript or recording. The address of D.C. Law Students in Court is 4340 Connecticut Avenue, NW, Washington, DC 20008.

June 14, 2008: Panelist, "Our Enduring Constitution: Applications and Interpretations," American Constitution Society, Washington, DC. Video supplied.

December 2007: Commenter, lunchtime discussion regarding *Advocacy Matters Before and Within the U.S. Supreme Court: Transforming the Court by Transforming the Bar*, 90 Geo. L. J. 1487 (2008), Supreme Court Institute, Georgetown University Law Center, Washington, DC. Notes supplied.

November 27, 2007: Panelist, discussion of new Supreme Court practice rules, Edward Coke Appellate Inn of Court, Washington, DC. Notes supplied.

November 5, 2007: Panelist, "And Justice For All: A Constitutional Conversation on the Role of the Justice Department and the Attorney General," The Constitution Project, Washington, DC. Notes supplied.

September 27, 2007: Speaker, "Supreme Court Breakfast Briefing," American Civil Liberties Union, Washington, DC. I spoke at this press briefing about a petition for certiorari I filed on behalf of the American Civil Liberties Union in *Sanchez v. San Diego County*, raising a Fourth Amendment challenge to government inspections of the homes of public assistance recipients. I have no notes, transcript or recording. The address of the American Civil Liberties Union is 125 Broad Street, New York, NY 10004.

August 2007: Speaker, discussion of recent Supreme Court developments in criminal procedure, Annual Meeting, National Association of Criminal Defense Lawyers, San Francisco, CA. This talk reviewed the criminal procedure decisions of the previous Supreme Court Term, focusing on Fourth Amendment cases. I have no notes, transcript or recording. The address of the National Association of Criminal Defense Lawyers is 1660 L Street, NW, 12th Floor, Washington, DC 20036.

July 28, 2007: Moderator, "The Search for Compromise and Consensus on Reproductive Rights," American Constitution Society, Washington, DC. Video is available at: <http://www.youtube.com/watch?v=zj1ThZuLu70>.

March 2007: Speaker, discussion of Council of the Great City Schools amicus brief and pending Supreme Court decision in *Parents Involved in Community Schools v. Seattle School District No. 1*, Council of the Great City Schools Annual Legislative Conference, Washington, DC. Notes supplied.

November 8, 2006: Moderator, "The Advocates Speak: Federal Abortion Ban Cases," American Constitution Society, O'Melveny & Myers, Washington, DC. Notes supplied.

October 16, 2006: Panelist, workshop on the use of law reviews in legal practice, Yale Law Journal, New Haven, CT. I participated on a panel for Yale Law Journal members about the relationship between legal scholarship and legal practice. I have no notes, transcript or recording. The address of the Yale Law Journal is 127 Wall Street, New Haven, CT 06511.

June 17, 2006: Moderator, "An Establishment Clause for the 21st Century," American Constitution Society, Washington, DC. I introduced the speakers and facilitated discussion regarding the Establishment Clause. I have no notes, transcript or recording. The address of the American Constitution Society is 1333 H Street, NW, 11th Floor, Washington, DC 20005.

December 7, 2005: Panelist, "Petitions and Oppositions to Certiorari," National Association of Attorneys General Supreme Court Advocacy Seminar, Washington, DC. I spoke on a panel giving Supreme Court practice guidance to lawyers working for state attorneys general. My recollection is that my focus was briefs in opposition to certiorari. I have no notes, transcript or recording. The address of the National Association of Attorneys General is 2030 M Street, NW, Eighth Floor, Washington, DC 20036.

November 9, 2005: Panelist, "*Rumsfeld v. FAIR*: Arguments Leading to the Supreme Court," University of Maryland Law School, Baltimore, MD. I spoke on a panel for Professor Michael Greenberger's class and discussed arguments made in a brief I authored in the *Rumsfeld v. FAIR* case. I have no notes, transcript or recording. The address of the University of Maryland Carey School of Law is 500 West Baltimore Street, Baltimore, MD 21201.

September 2005: Panelist, "The John Roberts Confirmation Hearings," Federalist Society, George Washington University Law School chapter, Washington, DC. To the best of my recollection, the panel focused on testimony at the confirmation hearings for Chief Justice John Roberts and the prospects for confirmation. I have no notes, transcript or recording. The address of the George Washington University Law School is 2000 H Street, NW, Washington, DC 20052.

June 7, 2005: Panelist, "Counting to Five: Arguing the Close Case in the Supreme Court," American Constitution Society, O'Melveny & Myers, Washington, DC. Notes supplied.

Approximately October 2004: Remarks to Professor Steve Wermiel's law school class on the Supreme Court at American University Washington College of Law, Washington, DC. Along with other former Supreme Court law clerks, I talked to

Professor Wermiel's class about the role of Supreme Court clerks. I have no notes, transcript or recording. The address of the American University Washington College of Law is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

September 24, 2004: Speaker, "Doing Theory, Doing Law: A Theoretical Guide to the Difference Between Theory and Practice," Dean's Introductory Lecture, Yale Law School, New Haven, CT. Video is available at: <http://www.law.yale.edu/outside/av/ram/lectures/YLSIntroDellingerHarris092404.ram>.

June 19, 2004: Moderator, "A New Birth of Freedom: Liberty, Equality and the Fourteenth Amendment," American Constitution Society, Washington, DC. My recollection is that my role was to introduce the speakers on this panel, who discussed the Fourteenth Amendment and, in particular, section 5 of that amendment. I have no notes, transcript or recording. The address of the American Constitution Society is 1333 H Street, NW, 11th Floor, Washington, DC 20005.

April 26, 2004: Speaker, discussion of Solomon Amendment litigation, Harvard Law School, Cambridge, MA. In the course of representing members of the Harvard Law faculty in their challenge to the federal Solomon Amendment, I spoke at Harvard Law School, along with Harvard professors, about the Solomon Amendment litigation. I have no notes, transcript or recording. The address of the Harvard Law School is 1563 Massachusetts Avenue, Cambridge, MA 02138.

January 21, 2004: Panelist, "Being Liberal at a Large Law Firm," American Constitution Society, D.C. Lawyers' and Georgetown Law Center Chapters, Washington, DC. To the best of my recollection, my remarks on this panel focused on my pro bono work at O'Melveny & Myers. I have no notes, transcript or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

February 1990: Moderator, informal open meeting, Yale Law School, New Haven, CT. As moderator, my role was to call on students to discuss their views on a pending Yale Law School address by a Nation of Islam leader. I have no notes, transcript or recording. The address of Yale Law School is 127 Wall Street, New Haven, CT 06511.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have provided copies of all interviews I could identify after consulting my files and searching Internet sources. Many of the listed articles were reprinted in other

editions or outlets, sometimes under different names.

Jeffrey Fisher, *A Clinic's Place in the Supreme Court Bar*, 65 Stan. L. Rev. 137, 173-74 (2013). Copy supplied.

Erin McClam, *In Case After Case, Big Wins for Big Business This Year at the Supreme Court*, NBC News, July 7, 2013. Copy supplied.

Adam Liptak, *Three Justices Bound by Beliefs, Not Just Gender*, N.Y. Times, July 1, 2013. Copy supplied.

Robert Barnes, *A Conservative Supreme Court Swerves to Avoid Easy Definition*, Wash. Post, June 27, 2013. Copy supplied.

Jeff Overley, *Dubbed 'First Gay Justice,' Kennedy May Not Be Done Yet*, Law360, June 26, 2013. Copy supplied.

KNX 1070 – CBS Radio Los Angeles, drive-time interview regarding Supreme Court decision in *Windsor v. United States*, June 26, 2013. Audio recording supplied.

Adam Liptak, *High Court Stands Poised to Redefine Legal Equality*, N.Y. Times, June 23, 2013. Copy supplied.

KNX 1070 – CBS Radio Los Angeles, drive-time interview regarding upcoming Supreme Court decision in *Hollingsworth v. Perry*, June 3, 2013. Audio recording supplied.

Robert Barnes, *What Did the Supreme Court Hear About Same-Sex Marriage on Election Day?*, Wash. Post, Nov. 13, 2012. Copy supplied.

Lawrence Hurley, *Speculation Starts on Retirements, Nominations*, E&E Publishing, Nov. 8, 2012. Copy supplied.

Lawrence Hurley, *Ideological Balance on Bench at Stake as Election Approaches*, E&E Publishing, Oct. 16, 2012. Copy supplied.

Mark Walsh, *Affirmative Action Case Queued Up for Hearing at High Court*, Educ. Wk., Oct. 1, 2012. Copy supplied.

Stacey Vanek Smith, *How College Affirmative Action Affects Business*, Marketplace, Oct. 1, 2012. Article supplied and audio available at <http://www.marketplace.org/topics/business/education/how-college-affirmative-action-affects-business>.

Greg Stohr, *Court in New Term Weighs Same-Sex to Race-Related Laws*,

Bloomberg News, Oct. 1, 2012. Copy supplied.

Robert Barnes, *Supreme Court's Focus Shifts to Civil, Gay Rights*, Wash. Post, Sept. 30, 2012. Copy supplied.

Mark Walsh, *A Changing Landscape: In First Court with Three Women, All Eyes Are on Justice Kagan*, ABA Journal, Oct. 1, 2010. Copy supplied.

Maura Kelly Lannan, *Chicago Native Justice John Paul Stevens Steps Down After Serving as the Court's Most Senior Member*, Illinois Issues, University of Illinois Springfield, Sept. 2010. Copy supplied.

Mark Walsh, *K-12 Implications Seen in Some Cases Before High Court*, Educ. Wk., Sept. 29, 2010. Copy supplied.

Kitty Felde, *U.S. Supreme Court to Hear California Cases*, Southern California Public Radio, Sept. 21, 2010. Audio is available at: <http://www.scpr.org/news/2010/09/21/19405/us-supreme-court-to-hear-california-cases/>.

Lawrence Hurley, *Breyer to Step in As Chief Dissenter*, Daily Journal, July 16, 2010. Copy supplied.

Robert Barnes, *Roberts Led Supreme Court through Assertive Term*, Wash. Post, June 30, 2010. Copy supplied.

Mallie Jane Kim, *Ten Factors That Could Shape Kagan's Supreme Court Decisions*, U.S. News & World Rep., June 30, 2010. Copy supplied.

Robert Barnes, *Kagan Nomination Focuses Attention on Court Clerkships: Relevance of Earlier Work Debated*, Wash. Post, June 14, 2010. Copy supplied.

Geoffrey K. Pullum, *Pamela Harris Did Not Use "Of Diversity" as a Modifier*, Language Log (blog), May 17, 2010. Copy supplied.

Susan Milligan, *Personal Ties Bind Obama, Kagan*, Boston Globe, May 16, 2010. Copy supplied.

Robert Barnes, *In Kagan's Work as Solicitor General, Few Clues to Her Views*, Wash. Post, May 13, 2010. Copy supplied.

Mark Leibovich, *Reshaping Court's Culture, a Woman at a Time*, N.Y. Times, May 11, 2010. Copy supplied.

James Oliphant, *Faith's Role in Picking a New Justice*, The Nation, Apr. 22, 2010. Copy supplied.

Garrett Epps, *The Champion of Fairness*, Baltimore Sun, Apr. 21, 2010. Copy supplied.

Mark Walsh, *Education Cases One Facet of Stevens' High Court Legacy*, Educ. Wk., Apr. 21, 2010. Copy supplied.

Seth Stern, *White House Huddle on Court Mostly Symbolic*, Cong. Q., Apr. 19, 2010. Copy supplied.

James Oliphant, *President May Face Religious Litmus Test for Court Nominee*, Trib. Newspapers (Ft. Lauderdale Sun Sentinel), Apr. 18, 2010. Copy supplied.

Joan Biskupic, *Justice Stevens to Retire from Supreme Court*, USA Today, Apr. 12, 2010. Copy supplied.

Tony Mauro, *Days Shy of Turning 90, Stevens Announces Retirement*, N.Y. Law Journal, Apr. 12, 2010. Copy supplied.

Greg Stohr, *Obama Shuns the Left as White House Mulls U.S. High Court Slot*, Bloomberg, Apr. 12, 2010. Copy supplied.

Greg Stohr, *Justice Stevens, Court's 'Great Liberal Voice,' Stepping Down*, Bloomberg, Apr. 9, 2010. Copy supplied.

AOL News, Apr. 9, 2010. Copy supplied.

Robert Barnes, *Look Who's Talking*, Wash. Post, Apr. 5, 2010. Copy supplied.

Joan Biskupic, *Campaign Case May Have Set Course for Court*, USA Today, Feb. 8, 2010. Copy supplied.

Robert Barnes, *High Court Shows It Might Be Willing to Act Boldly*, Wash. Post, Jan. 22, 2010. Copy supplied.

Adam Liptak, *Settling the Law, Not Seeing the Future*, N.Y. Times, Jan. 19, 2010. Copy supplied.

Joan Biskupic, *Supreme Court's Stevens Keeps Cards Close to Robe*, USA Today, Oct. 19, 2009. Copy supplied.

Adam Liptak, *New Court Term May Give Hints to Views on Regulating Business*, N.Y. Times, Oct. 5, 2009. Copy supplied.

Adam Liptak, *The Newest Justice Takes Her Seat*, N.Y. Times, Sept. 9, 2009. Copy supplied.

Robert Barnes, *Even for Experienced Sotomayor, Many Changes Await*, Wash. Post, Aug. 8, 2009. Copy supplied.

Adam Liptak, *Roberts Shifts Court to Right, with Help from Kennedy*, N.Y. Times, July 1, 2009. Copy supplied.

Kimberly Atkins, *Exclusionary Rule in Peril?*, Lawyers USA, Feb. 24, 2009. Copy supplied.

HDNet World Report, *The Ten Commandments vs. the Seven Aphorisms and the Supreme Court*, Jan. 6, 2009. Available on iTunes at <https://itunes.apple.com/us/tv-season/hdnet-world-report-season-7/id288815459> (number 40).

Marcia Coyle, *Many Familiar Faces to Appear Before Justices*, Nat'l. Law Journal, Sept. 22, 2008. Copy supplied.

Tony Mauro, *Will Defense Lawyers Accept Help on High Court Criminal Cases?*, Legal Times, May 12, 2006. Copy supplied.

Lee Salisbury, *Taliban and Ayatollahs, American Style*, Axis of Logic, Sept. 9, 2004. Copy supplied.

Paul Boynton, *U.S. Supreme Court Rules States Can Be Sued Under FMLA*, Lawyers USA, June 9, 2003. Copy supplied.

Gina Holland, *Justices Won't Set Lawyer Standards; Supreme Court Rejects a Death Row Appeal Based on Inadequate Defense*, Durham Herald-Sun, May 29, 2002. Copy supplied.

Stephanie Goldberg, *Our Country's Top Legal Minds*, Glamour, July 1994. Copy supplied.

Carole Bass, *After a Civil Protest, Yale Law Grapples with Anger*, The Conn. Law Trib., Feb. 19, 1990. Copy supplied.

James Healion, *200 Protest Muslim's Address*, New Haven Reg., Feb. 15, 1990. Copy supplied.

Josh Luring, *Nation of Islam Spokesman Brings Controversy to Yale*, Yale Daily News, Feb. 9, 1990. Copy available at: <http://digital.library.yale.edu/cdm/compoundobject/collection/yale-ydn/id/167091/rec/24> (page 1).

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

- i. Of these, approximately what percent were:

jury trials: _____%
bench trials: _____% [total 100%]

civil proceedings: _____%
criminal proceedings: _____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In the fall of 2004, I volunteered with an informal group of lawyers advising the John Kerry presidential campaign on potential election challenges. I also canvassed for the campaign for a day.

Before graduating from college, I played a role in three political campaigns. In the spring of 1984, I volunteered regularly for approximately three months in the press office of the George McGovern presidential campaign in Washington, D.C. In the winter and spring of 1980, I volunteered at the Ted Kennedy presidential campaign headquarters in Washington, D.C. In early 1976, I handed out literature on a few occasions as a volunteer for the Mo Udall presidential campaign in the New Jersey and Pennsylvania primaries.

Although perhaps not directly responsive, in November 2012, I handed out literature at the polls on Election Day as a volunteer with Equality Maryland, in support of Maryland ballot Question 6 providing for marriage equality.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1992 to 1993, I served as a law clerk to Justice John Paul Stevens of the United States Supreme Court.

From 1990 to 1991, I served as a law clerk to Judge Harry T. Edwards, Circuit Judge for the United States Court of Appeals for the District of Columbia Circuit.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone. While teaching at Georgetown University Law Center, I have on one occasion been compensated for legal consulting services provided to O'Melveny & Myers in connection with an appellate brief. On other occasions I have consulted informally and without compensation with friends and former colleagues, primarily about Supreme Court briefs and oral arguments.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

September 1991 – June 1992
Shea & Gardner (now Goodwin Procter LLP)
901 New York Avenue, NW
Washington, DC 20001
Associate

1994 – 1996
Office of Legal Counsel
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Attorney-Advisor

1996 – 1999
University of Pennsylvania Law School
3501 Sansom Street
Philadelphia, PA 19104
Associate Professor

1999 – 2009
O'Melveny & Myers LLP
1625 I Street, NW
Washington, DC 20006
Of Counsel (2006 – 2009)
Partner (2005 – 2006)
Counsel (1999 – 2004)

2007 – 2010, 2012 – present
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001
Executive Director, Supreme Court Institute (2009 – 2010)
Visiting Professor (2007 – 2010, 2012 – present)

2007 – 2009
Harvard Law School
1563 Massachusetts Avenue
Cambridge, MA 02138
Lecturer and Co-Director, Supreme Court and Appellate Practice Clinic
(on behalf of and in the employ of O'Melveny & Myers)

2010 – 2012
Office of Legal Policy
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Principal Deputy to the Assistant Attorney General

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

As part of a program sponsored by the United States Court of Appeals for the District of Columbia Circuit, I served as a volunteer mediator in one case that was then pending on appeal. The case, which involved claims of malicious prosecution and false arrest, did not settle and ultimately was resolved by the Court of Appeals.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

My career has combined litigation, with an extensive focus on Supreme Court and appellate matters; teaching; management of an academic institute that prepares advocates for Supreme Court argument; and work as a government lawyer.

As an associate at Shea & Gardner from 1991 to 1992 between my clerkships, I worked on both trial and appellate matters. The majority of my time was spent on civil discovery and pre-trial preparation.

As an Attorney-Advisor in the Office of Legal Counsel from 1994 to 1996, I worked on a wide range of matters involving federal statutory and constitutional law. I drafted memoranda, offered oral advice, reviewed proposed bills for constitutionality and otherwise assisted the office in providing legal advice to the Department of Justice, other executive agencies, and the President.

As an Associate Professor at the University of Pennsylvania Law School from 1996 to 1999, I taught classes on criminal procedure, the law of church and state, and law and literature.

As a part-time attorney at O'Melveny & Myers from 1999 to 2009, I focused on Supreme Court and appellate litigation, authoring or co-authoring numerous appellate and Supreme Court briefs and delivering two oral arguments. I also worked on trial teams as a drafter of legal motions. I supervised more junior attorneys, reviewing and editing draft briefs, and managed or helped to manage client relationships.

While at O'Melveny & Myers, I also continued to teach. As Co-Director of the Harvard Law School Supreme Court and Appellate Practice Clinic from 2007 to 2009, I worked with O'Melveny colleagues in teaching Supreme Court and appellate practice and supervising students who were participating in drafting briefs. As a Visiting Professor at Georgetown University Law Center from 2007 to 2009, I taught a first-year constitutional criminal procedure class.

As Executive Director of the Supreme Court Institute at Georgetown University Law Center from 2009 to 2010, I managed a moot court program that prepares advocates for oral argument before the Supreme Court on a first-come, first-served basis, without regard to issue or position being argued. I participated as a judge in approximately 20 moot courts. I also developed and participated in educational programming on the Supreme Court for students, scholars, practitioners and the press. While at the Supreme Court Institute, I continued to teach at Georgetown Law as a Visiting Professor.

As Principal Deputy in the Office of Legal Policy from 2010 to 2012, I worked with the Assistant Attorney General to develop, coordinate and implement significant Department of Justice policy initiatives. I worked on a wide variety of issues, often supervising other attorneys in the office. I coordinated with other Department of Justice components and outside executive agencies, and advised on litigation matters within the Department.

My work since 2012 has been as a Visiting Professor at Georgetown University Law Center, where I have taught criminal procedure and constitutional law. As a Senior Advisor at the law school's Supreme Court Institute, I also have participated in moot courts for Supreme Court advocates.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As a lawyer at the Department of Justice, my clients were the United States and federal government agencies. In private practice, most of my clients were private companies or nonprofit organizations, though I also represented some individuals in appellate matters.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My work at the Department of Justice in the Offices of Legal Counsel and Legal Policy was advisory in nature. My work in private practice was almost exclusively in litigation, though in a few instances (approximately five percent of my private practice) I provided non-litigation-related advice to private clients. During my time in private practice, I appeared regularly on merits, certiorari and amicus briefs before the Supreme Court, sometimes as lead counsel and more often as co-counsel. I appeared as lead or co-counsel on merits and amicus briefs in the federal courts of appeals and state courts occasionally; I was lead or co-

counsel on approximately 12 federal courts of appeals briefs and fewer than ten state court briefs.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 90% |
| 2. state courts of record: | 10% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 50% |
| 2. criminal proceedings: | 50% |

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not tried a case to verdict. While at O'Melveny & Myers, I occasionally worked with trial teams in the firm's class action and mass tort practice, preparing significant motions in advance of trial. My most sustained participation on a trial team was in 2005 on behalf of Merck in connection with litigation over Vioxx, when I wrote pretrial motions and briefs on discovery and evidentiary issues in *Humeston v. Merck & Co. Inc.*, No. ATL-L-2272-03-MT (N.J. Super. Ct., Atlantic Cty.), a case ultimately tried to verdict. Another example is my participation in briefing on class certification at the district court stage in *In re Bridgestone/Firestone, Inc. Tires Products Liability Litigation*, 205 F.R.D. 503 (S.D. Ind. 2001), on behalf of Ford Motor Company. The majority of my practice was before appellate courts, where I appeared on briefs as counsel or co-counsel in approximately 100 cases before the federal courts of appeals and the United States Supreme Court.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | ___% |
| 2. non-jury: | ___% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As a member of the Supreme Court and appellate practice at O'Melveny & Myers from 1999 to 2009, I practiced regularly in the Supreme Court. I appeared as lead counsel or, more often, co-counsel on briefs at both the merits and certiorari stages, on behalf of both parties and amici. I also argued one case before the Supreme Court. A list of cases is below.

Argued Case:

Pleasant Grove City v. Summum, 555 U.S. 460 (2009) (transcript, 2008 WL 4892845; brief for respondent, 2008 WL 3851624; brief in opposition to certiorari, 2008 WL 508040)

Briefed Cases:

Johnson v. United States, 559 U.S. 133 (2010) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2009 WL 1580306)

McDaniel v. Brown, 558 U.S. 120 (2010) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2009 WL 2247123)

Forest Grove School District v. T.A., 557 U.S. 230 (2009) (amicus brief of Council of the Great City Schools supporting petitioner, 2009 WL 556377)

Caperton v. A.T. Massey Coal Company, 556 U.S. 868 (2009) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2009 WL 27299)

Flores-Figueroa v. United States, 556 U.S. 646 (2009) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2008 WL 5369546)

Dean v. United States, 556 U.S. 568 (2009) (amicus brief of National Association of Criminal Defense Lawyers, National Association of Federal Defenders, and Families Against Mandatory Minimums supporting petitioner, 2009 WL 97753)

Knowles v. Mirzayance, 556 U.S. 111 (2009) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2008 WL 4580043)

Duchesne City v. Summum, 555 U.S. 1210 (2009) (mem.) (brief in opposition to certiorari, 2008 WL 515866)

Waddington v. Sarausad, 555 U.S. 179 (2009) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2008 WL 4642108)

Herring v. United States, 555 U.S. 135 (2009) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2008 WL 2117118)

Bell v. Kelly, 555 U.S. 55 (2008) (amicus brief of National Association of Criminal Defense Lawyers and National Association of Federal Defenders supporting petitioner, 2008 WL 3459585)

Greenlaw v. United States, 554 U.S. 237 (2008) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2008 WL 494944)

Rothgery v. Gillespie County, Texas, 554 U.S. 191 (2008) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2008 WL 218874)

United States v. Santos, 553 U.S. 507 (2008) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2007 WL 2406794)

Commonwealth of Virginia v. Moore, 553 U.S. 164 (2008) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2007 WL 4340875)

Burgess v. United States, 553 U.S. 124 (2008) (amicus brief of National Association of Criminal Defense Lawyers and Families Against Mandatory Minimums supporting petitioner, 2008 WL 261196)

Federal Express Corp. v. Holowecki, 552 U.S. 389 (2008) (brief for petitioner, 2007 WL 2314314; reply brief, 2007 WL 3223219)

Danforth v. Minnesota, 552 U.S. 264 (2008) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2007 WL 2115452)

Watson v. United States, 552 U.S. 74 (2007) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2007 WL 1360321)

Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007) (amicus brief of Council of the Great City Schools, Magnet Schools of America, Public Education Network, United States Conference of Mayors, and San Francisco United School District supporting respondent, 2006 WL 2882698)

Brendlin v. California, 551 U.S. 249 (2007) (amicus brief of National Association of Criminal Defense Lawyers and National Association of Federal Defenders supporting petitioner, 2007 WL 697590)

Roper v. Weaver, 550 U.S. 598 (2007) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2007 WL 621848)

Schriro v. Landrigan, 550 U.S. 465 (2007) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2006 WL 3742250)

Scott v. Harris, 550 U.S. 372 (2007) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2007 WL 128586)

Abdul-Kabir v. Quarterman, 550 U.S. 233 (2007) (amicus brief of Child Welfare League of America, Juvenile Law Center, and National Association of Criminal Defense Lawyers supporting petitioner, 2006 WL 3425123)

Lawrence v. State of Florida, 549 U.S. 327 (2007) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2006 WL 1759444)

Burton v. Waddington, 549 U.S. 147 (2007) (amicus brief of National Association of Criminal Defense Lawyers and Washington Association of Criminal Defense Lawyers supporting petitioner, 2006 WL 2515633)

United States v. Resendiz-Ponce, 549 U.S. 102 (2007) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2006 WL 2506637)

Shirley v. United States, No. 07-501 (petition for certiorari, 2007 WL 3022794; reply brief, 2008 WL 275493) (cert. denied)

Sanchez v. County of San Diego, No. 07-211 (petition for certiorari, 2007 WL 2363246; reply brief, 2007 WL 3224719) (cert. denied)

Salinas v. United States, No. 07-36 (petition for certiorari, 2007 WL 1985503; reply brief, 2007 WL 2962915) (cert. denied)

Carey v. Musladin, 549 U.S. 70 (2006) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2006 WL 2430574)

State of Washington v. Recuenco, 548 U.S. 212 (2006) (amicus brief of National Association of Criminal Defense Lawyers and Washington Association of Criminal Defense Lawyers supporting respondent, 2006 WL 160298)

Dixon v. United States, 548 U.S. 1 (2006) (amicus brief of National Association of Criminal Defense Lawyers and National Clearinghouse for Defense of Battered Women supporting petitioner, 2006 WL 501634)

Hammon v. State of Indiana, 547 U.S. 813 (2006) (amicus brief of National Association of Criminal Defense Lawyers and Public Defender Service for the

District of Columbia supporting petitioner, 2005 WL 3597820; amicus brief in support of certiorari, 2005 WL 2204187)

Davis v. State of Washington, 547 U.S. 813 (2006) (amicus brief of National Association of Criminal Defense Lawyers, Washington Association of Criminal Defense Lawyers, and Public Defender Service for the District of Columbia supporting petitioner, 2005 WL 3543102; amicus brief of National Association of Criminal Defense Lawyers and Public Defender Service for the District of Columbia in support of certiorari, 2005 WL 1943609)

Brigham City v. Stuart, 547 U.S. 398 (2006) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2006 WL 820363)

Day v. Crosby, 547 U.S. 198 (2006) (re-captioned *Day v. McDonough*) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2005 WL 3279095; amicus brief in support of certiorari, 2005 WL 1364917)

Georgia v. Randolph, 547 U.S. 103 (2006) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2005 WL 2147326)

Rumsfeld v. Forum for Academic and Institutional Rights, 547 U.S. 47 (2006) (amicus brief of Harvard Law professors supporting respondents, 2005 WL 2367595)

Gonzales v. State of Oregon, 546 U.S. 243 (2006) (amicus brief of Cato Institute supporting respondent, 2005 WL 1687167)

Faith Center Church Evangelical Ministries v. Glover, No. 06-1633 (brief in opposition to certiorari, 2007 WL 2274445) (cert. denied)

Hrasky v. United States, No. 06-827 (amicus brief of National Association of Criminal Defense Lawyers in support of certiorari, 2007 WL 844907) (cert. denied)

Pinks v. North Dakota, No. 06-564 (amicus brief of National Association of Criminal Defense Lawyers, Innocence Project, Public Defender Service of District of Columbia, and law professors in support of certiorari, 2006 WL 3419822) (cert. denied)

Schaffer v. Weast, 546 U.S. 49 (2005) (amicus brief of Council of the Great City Schools, American Association of School Administrators, National Education Association, Pennsylvania Association of School Administrators, National Association of Elementary School Principals, Public School Superintendents' Association of Maryland, and Connecticut Association of Public School Superintendents supporting respondent, 2005 WL 1521613)

Johnson v. State of California, 545 U.S. 162 (2005) (amicus brief of NAACP Legal Defense and Educational Fund, Inc., American Civil Liberties Union, American Civil Liberties Union of Northern Carolina, Lawyers' Committee for Civil Rights Under Law, and National Association of Criminal Defense Lawyers supporting petitioner, 2005 WL 429978)

Veneman v. Livestock Marketing Ass'n, 544 U.S. 550 (2005) (amicus brief of American Cotton Shippers Association, Atlantic Cotton Association, California Cotton Growers, Cotton Research and Promotion Defense Council, Delta Council, National Cotton Council of America, Southern Cotton Association, Southern Cotton Growers, Texas Cotton Association Cotton Producers, and Western Cotton Shippers Association supporting petitioner, 2004 WL 1881772)

Rhines v. Weber, 544 U.S. 269 (2005) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2004 WL 1988104)

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Muehler v. Mena, 544 U.S. 93 (2005) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2004 WL 2491776)

Smith v. Massachusetts, 543 U.S. 462 (2005) (amicus brief of National Association of Criminal Defense Lawyers supporting petitioner, 2004 WL 2190702)

Lovitt v. True, No. 05-5044 (amicus brief of National Association of Criminal Defense Lawyers in support of certiorari, 2005 WL 6735435) (cert denied)

Moore v. Maryland, No. 05-1411 (amicus brief of National Association of Criminal Defense Lawyers in support of certiorari, 2006 WL 1887185) (cert. denied)

Perez v. United States, No. 05-596 (amicus brief of National Association of Criminal Defense Lawyers in support of certiorari, 2006 WL 247281) (cert. denied)

Cooper Industries v. Aviall Svcs. Inc., 543 U.S. 157 (2004) (brief for respondent, 2004 WL 768554)

Devenpeck v. Alford, 543 U.S. 146 (2004) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2004 WL 1900507)

Sosa v. Alvarez-Machain, 542 U.S. 692 (2004) (amicus brief of National Foreign Trade Council, USA *Engage, Chamber of Commerce of the United States of

America, United States Council for International Business, International Chamber of Commerce, Organization for International Investment, Business Roundtable, American Petroleum Institute, and US-ASEAN Business Council supporting petitioner, 2004 WL 162760; amicus brief in support of certiorari, 2003 WL 22429204)

Pliler v. Ford, 542 U.S. 225 (2004) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2004 WL 630589)

Eagles, Ltd. v. Felder, No. 04-1713 (petition for certiorari, 2005 WL 1464611) (cert. denied)

Lawrence v. Texas, 539 U.S. 558 (2003) (amicus brief of Human Rights Campaign; National Gay and Lesbian Task Force; Parents, Families, and Friends of Lesbians and Gays; National Center for Lesbian Rights; Gay and Lesbian Advocates and Defenders; Gay and Lesbian Alliance against Defamation; Pride at Work; AFL-CIO; People for the American Way Foundation; Anti-Defamation League; Mexican American Legal Defense and Educational Fund; Puerto Rican Legal Defense and Education Fund; Society of American Law Teachers; Soulforce; Stonewall Law Association of Greater Houston; Equality Alabama; Equality Florida; S.A.V.E.; Community Center of Idaho; Your Family, Friends, and Neighbors; Kansas Unity and Pride Alliance; Louisiana Electorate of Gays and Lesbians; Equality Mississippi; Promo; North Carolina Gay and Lesbian Attorneys; Cimarron Foundation of Oklahoma; South Carolina Gay and Lesbian Pride Movement; Alliance for Full Acceptance; Gay and Lesbian Community Center of Utah; and Equality Virginia supporting petitioner, 2003 WL 152347)

Grutter v. Bollinger, 539 U.S. 306 (2003) (amicus brief of Law School Admission Council supporting respondent, 2003 WL 399229)

Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23 (2003) (brief for respondent, 2003 WL 1101321)

Department of Human Resources v. Hibbs, 538 U.S. 721 (2003) (amicus brief of National Women's Law Center, AARP, American Association of University Professors, American Association of University Women, American Civil Liberties Union, American Jewish Committee, Anti-Defamation League, Business and Professional Women/USA, Center for Constitutional Rights, Center for Women Policy Studies, Connecticut Women's Education and Legal Fund, Disability Rights Education and Defense Fund, Epilepsy Foundation, Equal Rights Advocates, Feminist Majority Foundation, Mexican American Legal Defense and Educational Fund, NARAL Foundation, National Association of Protection and Advocacy Systems, National Council of Jewish Women, National Council of Negro Women, National Education Association, National Employment Law Project, National Employment Lawyers Association, National Health Law Program, National Organization for Women Foundation, 9to5, National

Association of Working Women, Northwest Women's Law Center, Older Women's League, People for the American Way Foundation, Women Employed, Women Work! The National Network for Women's Employment, and Women's Law Project supporting respondent, 2002 WL 31444460)

Norfolk and Western Railway Co. v. Ayers, 538 U.S. 135 (2003) (amicus brief of Coalition for Asbestos Justice, National Association of Manufacturers, American Tort Reform Association, American Chemistry Council, and American Petroleum Institute supporting petitioner, 2002 WL 1352560)

Washington Dep't. of Social and Health Servs. v. Keffeler, 537 U.S. 371 (2003) (brief for petitioners, 2002 WL 1808695; reply brief, 2002 WL 31527638; reply to brief in opposition to certiorari, 2002 WL 32101007)

Los Angeles News Svc. v. Reuters Television Internat'l, No. 03-965 (brief in opposition to certiorari, 2004 WL 745143) (cert denied)

Circuit City Stores v. Mantor, No. 03-605 (petition for certiorari, 2003 WL 22454016; reply brief, 2004 WL 50127) (cert. denied)

Circuit City Stores v. Ingle, No. 03-604 (petition for certiorari, 2003 WL 22454015; reply brief, 2004 WL 50127) (cert. denied)

Top Rank v. Florida State Boxing Comm'n, No. 03-549 (petition for certiorari, 2003 WL 22364176; reply brief, 2003 WL 22970607) (cert. denied)

Cooper v. Boyce, No. 03-176 (petition for certiorari, 2003 WL 22428694) (cert. denied)

Bell v. Cone, 535 U.S. 685 (2002) (amicus brief of National Association of Criminal Defense Lawyers supporting respondent, 2002 WL 377918)

Shwayder v. United States, No. 02-1866 (amicus brief of National Association of Criminal Defense Lawyers in support of certiorari, 2003 WL 22428387) (cert. denied)

Corporation of the Presiding Bishop v. First Unitarian Church of Salt Lake City, No. 02-1350 (amicus brief of Venetian Casino Resort in support of certiorari, copy supplied) (cert. denied)

Mobil Corp. and Honeywell Internat'l, Inc. v. Adkins, No. 02-132 (petition for certiorari, 2002 WL 32134868; reply brief, copy supplied; supplemental brief, 2002 WL 32134880) (cert. denied)

Semtek Internat'l Inc. v. Lockheed Martin Corp., 531 U.S. 497 (2001) (brief for respondent, 2000 WL 1509954; brief in opposition, 2000 WL 33979686)

Circuit City Stores v. Adams, No. 01-1460 (petition for certiorari, 2002 WL 32136015) (cert. denied)

Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000) (amicus brief of American Jewish Congress, American Jewish Committee, Americans United for Separation of Church and State, Anti-Defamation League, Council on Religious Freedom, Hadassah, Interfaith Alliance, Jewish Council for Public Affairs, National Pearl, People for the American Way Foundation, Soka Gakkai International-USA, and Unitarian Universalist Association supporting respondent, 2000 WL 140838)

State of Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765 (2000) (supplemental amicus brief of Federation of American Health Systems, copy supplied)

Renzi v. Connelly School of the Holy Child, No. 00-1118 (petition for certiorari, 2001 WL 34117145; reply brief, 2001 WL 34117151) (cert. denied)

United Airlines v. Frank, No. 00-948 (petition for certiorari, 2000 WL 34000446) (cert. denied)

Exxon v. Baker, No. 00-90 (petition for certiorari, 2000 WL 33999340; reply brief, 2000 WL 33999338) (cert. denied)

Desiderio v. National Ass'n of Securities Dealers, No. 99-1285 (brief in opposition to certiorari, 1999 WL 33640362) (cert. denied)

Chevron U.S.A. v. Oxy USA, No. 99-494 (brief in opposition to certiorari, copy supplied) (case settled before decision on certiorari).

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The cases are listed in reverse chronological order based on the date of decision.

1. *Herring v. United States*, 555 U.S. 135 (2009)

This is one of the Supreme Court cases in which I participated on behalf of the National Association of Criminal Defense Lawyers (NACDL), appearing as amicus. In this case, from approximately March to May of 2008, I was lead counsel for NACDL and the principal author of the NACDL amicus brief in support of petitioner. The case involved the scope of the Fourth Amendment exclusionary rule and, in particular, whether the rule should apply to an illegal arrest made by one officer that is the result of a negligent record-keeping error by another police employee. The Supreme Court ruled against petitioner, holding that the “good faith” exception to the exclusionary rule should apply in such cases.

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2. *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009)

As lead Supreme Court counsel for respondent Summum, a religious organization, I argued this case before the Supreme Court and was principal author of respondent's opening and reply briefs on the merits and the brief in opposition to certiorari. My work on this case spanned most of the calendar year 2008. The case arose when the City of Pleasant Grove denied Summum's request to donate a monument to its religious beliefs for display in a public park that contained other privately-donated monuments, including a Ten Commandments monument. The issue before the Supreme Court was whether, as the Court of Appeals for the Tenth Circuit had held, the exclusion of Summum's proposed monument from the park constituted a content-based restriction on speech in a traditional public forum in violation of the First Amendment's Free Speech Clause. The Supreme Court rejected Summum's claim, holding that the city's placement of monuments in its public park constituted government speech not subject to review under the Free Speech Clause.

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3. *United States v. Martha Stewart*, 433 F.3d 273 (2nd Cir. 2006) (Judges Newman, Wesley, and Hall)

O'Melveny & Myers represented Ms. Stewart in her appeal of criminal convictions for false statements and obstruction, and from the summer of 2004 through the spring of 2005, I played a leading role in drafting the opening, reply and supplemental briefs in the Second Circuit. The case arose from an investigation into a sale of stock by Ms. Stewart. Although Ms. Stewart was not charged with insider trading, her communications with government investigators led to the charges of false statements and obstruction on which she was convicted. Numerous issues were raised on appeal, including evidentiary issues regarding government references to the uncharged crime of insider trading; a Sixth Amendment claim under *Crawford v. Washington*, 541 U.S. 36 (2004), as to use of out-of-court statements; prejudice arising from the testimony of a government expert witness that later led to perjury charges against the witness; and possible juror misconduct. The Second Circuit upheld Ms. Stewart's convictions.

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4. *Rumsfeld v. Forum for Academic and Institutional Rights*, 547 U.S. 47 (2006); *Forum for Academic and Institutional Rights v. Rumsfeld*, 446 F.3d 1317 (3rd Cir. 2006) (Judges Ambro, Aldisert, and Stapleton)

Along with colleagues at O'Melveny & Myers, I was counsel to members of the Harvard Law School faculty appearing as amici in the Third Circuit and then in the Supreme Court in support of the Forum for Academic and Institutional Rights ("FAIR"), and was the principal drafter of both briefs. My work on the case began in the winter of 2004 and ended in the fall of 2005. The case involved a challenge by FAIR to the federal Solomon Amendment, which denies certain federal funds to institutions of higher learning that do not provide equal access to military recruiters on campus. The principal issue before the Third Circuit and the Supreme Court was whether the Solomon Amendment violated the First Amendment free speech rights of affected institutions. Our clients also raised an alternative statutory argument: that properly construed, the Solomon Amendment does not apply when an institution of higher learning enforces a generally applicable non-discrimination policy against military recruiters. FAIR prevailed in the Third Circuit on its First Amendment claim. The Supreme Court reversed, holding that the Solomon Amendment does apply to enforcement of a general non-discrimination policy against the military and does not violate the First Amendment.

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5. *Schaffer v. Weast, Superintendent of Montgomery Co. Public Schools*, 546 U.S. 49 (2005)

From roughly the spring to the fall of 2005, I was counsel to the Council of the Great City Schools, appearing as Supreme Court amicus in support of respondent Superintendent Weast, and the primary drafter of the amicus brief filed on behalf of the Council and other organizations. The case arose when the parents of petitioner, a student, challenged the adequacy of the “individualized education program” (“IEP”) established for him by the Montgomery County Public School System pursuant to the Individuals with Disabilities Education Act (“IDEA”). The issue before the Supreme Court was allocation of the burden of proof in administrative hearings challenging IEPs under the IDEA. Our client described for the Court the effort and expertise that goes into initial development of IEPs, and argued that placing the burden of proof on school systems would shift scarce resources to litigation and away from the educational mission of schools. The Supreme Court ruled for respondent and held that the burden of persuasion lies on the party seeking relief, meaning, in cases like this one, on parents challenging the adequacy of a child’s IEP.

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6. *Bradley v. American Household, Inc. and Moffett*, 378 F.3d 373 (4th. Cir. 2004)
(Judges Wilkinson, Luttig, and Michael)

O'Melveny & Myers represented Mr. Moffett, a lawyer, in this appeal of discovery sanctions ordered by a West Virginia district court. I worked on the case from the end of 2003 through the summer of 2004, and was the principal drafter of the appellant's opening and reply briefs. Mr. Moffett had represented Sunbeam Corporation (succeeded by American Household, Inc.) in a previous products liability suit by the Bradleys regarding a Sunbeam electric blanket. After the case settled, the Bradleys moved to reopen the case and argued that Sunbeam and Mr. Moffett had destroyed evidence that was the subject of prior discovery requests and court order. The district court imposed severe sanctions on both Sunbeam and Mr. Moffett, who jointly appealed. The principle issues on appeal were whether the sanctions amounted to criminal contempt penalties imposed without the requisite criminal procedure protections and whether, to the extent the sanctions were not criminal in nature, they nevertheless were foreclosed by the integrated settlement agreement negotiated by the parties. Mr. Moffett also argued that the district court abused its discretion in imposing severe sanctions in the absence of evidence of bad-faith misconduct or prejudice. The Fourth Circuit ruled for Sunbeam and Mr. Moffett and vacated the sanctions award.

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7. *Redman v. State*, Maryland Court of Special Appeals, Docket No. 1954/03 (Nov. 10, 2004)

As part of a cooperative program with the Maryland Office of Public Defender that I established and supervised at O'Melveny & Myers, I was pro bono counsel for Mr. Redman on his appeal of his criminal convictions for second degree rape and child sexual abuse. From the spring through the fall of 2004, I briefed and argued the case before the Maryland Court of Special Appeals, focusing on the adequacy of the charging document and the voluntariness of Mr. Redman's confession. The Court of Special Appeals held that claims regarding the charging document and the chief claim regarding the confession had not been preserved at trial, and it affirmed the convictions.

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8. *Washington State Dep't. of Social and Health Servs. v. Keffeler*, 537 U.S. 371 (2003)

O'Melveny & Myers was counsel to petitioner Washington State Department of Social and Health Services in this case, and from approximately spring to fall of 2002, I played a substantial role in authoring the reply brief on certiorari and the merits briefs (opening and reply). At issue was whether the Social Security Act prohibited the Department's practice of using the social security benefits of children in its foster-care system to pay for the children's maintenance. The Court ruled for the Department, holding that its use of social security benefits to reimburse itself for the cost of foster care did not violate the "anti-attachment" provision of the Social Security Act.

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9. *Mobil Corp. and Honeywell Internat'l, Inc. v. Adkins*, No. 02-132 (2002)

O'Melveny & Myers represented Mobil Corporation in seeking certiorari review in the Supreme Court, and I was the principal drafter of the certiorari petition, the reply brief, and supplemental briefing on certiorari. My involvement in the case, which also included a substantial role in coordinating extensive amicus support for the petition, spanned roughly a year from the fall of 2001 to the fall of 2002. The case arose from a proposed mass aggregation in West Virginia state court of thousands of individual cases alleging asbestos exposure. Mobil argued that the proposed aggregation would violate its Fourteenth Amendment due process rights by unduly hindering its right to defend itself, and that application of West Virginia state law to all of the cases, as contemplated by the proposal, also would violate the Due Process Clause. The Court denied the petition for certiorari.

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10. *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497 (2001)

O'Melveny & Myers represented Lockheed Martin in this Supreme Court case, and I was the principal drafter of the brief in opposition to certiorari and a contributor to the merits brief. My involvement in the case ran from the spring to the winter of 2000. The case arose from a breach of contract and business torts suit filed against Lockheed Martin by Semtek, originally in California court. A federal district court in California dismissed the suit as outside the California statute of limitations, and when Semtek filed the same suit in Maryland state court, that court held that the claim was precluded under Federal Rule of Civil Procedure 41(b) and dismissed the new action on res judicata grounds. The issue in the Supreme Court was whether the claim-preclusive effect of the original California diversity judgment should be governed by federal law and Federal Rule of Civil Procedure 41(b), as the Maryland courts had held, or by California law. The

Supreme Court ruled against Lockheed Martin: It agreed that federal law should govern, but instead of Rule 41(b), it adopted a federal common law rule that incorporates the state law of claim preclusion in diversity cases like this one.

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(202) 362-0636

Jonathan S. Massey
 Massey & Gail, LLP
 1325 G Street, NW
 Washington, DC 20005
 (202) 652-4511

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As an Attorney-Advisor at the Office of Legal Counsel from 1994 to 1996, my practice consisted of advising and counseling. I worked on a wide range of issues involving federal constitutional, statutory and regulatory law. I was engaged in all aspects of the Office's work, including drafting memoranda and opinions, providing oral advice, meeting and coordinating with other Department of Justice components and outside agencies, and reviewing proposed bills for constitutionality and proposed executive orders for form and legality.

As Executive Director of the Supreme Court Institute at Georgetown University Law Center in 2009 and 2010, I managed and participated extensively in a program of moot courts for Supreme Court advocates. This non-partisan program is made available to oral advocates on a first-come, first-served basis, regardless of the nature of the case or the position being argued. In that capacity, I regularly advised lawyers about their cases and oral arguments.

As Principal Deputy in the Office of Legal Policy from 2010 to 2012, my practice again involved advising and counseling, this time on Department of Justice policy initiatives. I worked with the Department's leadership offices and components to review, evaluate and implement policy initiatives and advised on certain litigation matters within the Department.

I have not performed any lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

In 2014, I taught Constitutional Law I: The Federal System at Georgetown University Law School. The course covers structure of government issues such as judicial review, separation of powers, and federalism. Syllabus supplied.

In 2012, I taught Criminal Procedure at Georgetown University Law Center. This is a slightly abbreviated version of the school's standard Criminal Justice course, and covers Fourth and Fifth Amendment issues. Syllabus supplied.

In 2010, also at Georgetown University Law Center and in conjunction with the Supreme Court Institute, I taught a workshop on Supreme Court oral argument. The course focused on attendance at and analysis of Supreme Court Institute moot courts and also covered the fundamentals of Supreme Court oral argument procedure. No syllabus is available.

From 2007 to 2010 and in 2013, I taught Criminal Justice at Georgetown University Law Center. The course covered constitutional issues related to the investigation of crime by the police, with an emphasis on the Fourth and Fifth Amendments. Representative syllabi supplied.

From 2007 to 2009, on behalf of O'Melveny & Myers and with my O'Melveny & Myers colleagues Walter Dellinger and Jonathan Hacker, I co-taught a Supreme Court and Appellate Practice Clinic at Harvard Law School. The clinic covered the basics of Supreme Court and appellate practice, and we supervised students as they worked on briefs. Representative syllabus supplied.

In 1999, I co-taught a seminar on Law and Literature with Anne Kringel at University of Pennsylvania Law School. The seminar explored representations of the law and the legal system in works of fiction. No syllabus is available.

In 1997 and 1998, I taught Constitutional Criminal Procedure at University of Pennsylvania Law School. The course covered constitutional issues related to the investigation of crime by the police, with an emphasis on the Fourth and Fifth Amendments. No syllabus is available, but the course was similar to criminal procedure classes I have taught more recently, for which syllabi are supplied.

In 1997, I taught a seminar in Advanced Topics in Criminal Procedure at University of Pennsylvania Law School. The seminar reviewed legal scholarship relating to criminal procedure, with an emphasis on the Fourth and Fifth Amendments. No syllabus is available.

In 1996 and 1999, I taught Church and State at University of Pennsylvania Law School. The course covered issues related to the First Amendment's Free Exercise and Establishment Clauses. Representative syllabus supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future

for any financial or business interest.

I have no anticipated receipts from deferred income arrangements.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no current plans, commitments or agreements to pursue any outside employment, with or without compensation, during judicial service if I am confirmed.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would scrupulously follow the Code of Conduct for United States Judges and all other applicable ethical principles governing recusal. I have not been active in litigation for several years and am not aware of any cases or categories of litigation that are likely to present potential conflicts of interest, but I would recuse from any case on which I had previously worked or in which my impartiality might reasonably be questioned. I also would follow closely the rules for recusal in cases involving or affecting Google, Inc., where my husband is employed, and in any other case that might raise a financial conflict.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would consult applicable rules, canons and decisions addressing conflicts of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges. I would compile a list of matters or parties that might present a financial

or other conflict of interest so that I or other officials of the court could make a timely identification of potential conflicts. In close cases, I would make any necessary inquiries and then consult with judges or any person designated by the court to provide advice on conflicts questions.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While at O'Melveny & Myers, I engaged in substantial pro bono legal representation in numerous cases on appeal. My most significant pro bono representation was in the case of *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), in which I was lead counsel in the United States Supreme Court, devoting hundreds of hours to briefing and arguing a First Amendment free speech case on behalf of a religious organization.

Some of my pro bono work involved representation of individuals. Examples include a certiorari petition I filed in the Supreme Court on behalf of Ms. Shirley in a case arising from her rape by a federal correctional officer and presenting issues under the Federal Tort Claims Act (2007 WL 3022794), and substantial work I contributed as counsel to Mr. Jackson in *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005), in which the Supreme Court ruled for Mr. Jackson, who was removed from his position coaching girls' basketball after he complained about the unequal treatment of his team, and held that Title IX's private cause of action extends to claims of retaliation. I also established a pro bono program at O'Melveny & Myers in which the firm worked with the Maryland Office of Public Defender to provide pro bono representation to defendants appealing their criminal convictions in state court, and I supervised attorneys participating in the program. As part of the program, I provided pro bono representation to Mr. Redman in his appeal of his criminal convictions to the Maryland Court of Special Appeals.

I also represented many nonprofits and public interest organizations on a pro bono basis. Examples include my work on Supreme Court amicus briefs for the Cato Institute in *Gonzales v. Oregon*, 546 U.S. 243 (2006); the Council of the Great City Schools in cases including *Schaffer v. Weast*, 546 U.S. (2005); the Human Rights Campaign and other similar organizations in *Lawrence v. Texas*, 539 U.S. 558 (2003); the National Women's Law Center and other organizations in *Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003); and the American Jewish Congress and other religious and nonprofit groups in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000). My most sustained pro bono representation was of the National Association of Criminal Defense Lawyers. For several years, I represented the Association in the Supreme Court as amicus in numerous criminal cases, usually as co-counsel on briefs prepared primarily by lawyers at other firms and occasionally as a principal drafter of a brief prepared at O'Melveny & Myers.

Both while working at O'Melveny & Myers and again starting in 2012, I have volunteered many hours each year as a moot court judge with the Supreme Court Institute at Georgetown University Law Center, helping to prepare lawyers for their oral arguments before the Supreme Court. I have served as a judge on all kinds of cases, without respect to the nature of the case or the position being argued, but many of the lawyers I have assisted have represented disadvantaged clients or nonprofit organizations.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In October 2013, I was contacted by an official from the White House Counsel's Office, inquiring whether I was interested in being considered for nomination to the United States Court of Appeals for the Fourth Circuit. On November 4 and 18, 2013, I met in Baltimore, Maryland with members of a committee advising Senators Barbara Mikulski and Ben Cardin on a pending Fourth Circuit vacancy. On December 6, 2013, the committee informed me that it was forwarding my name to the Senators. On December 10, 2013, I met with Senators Mikulski and Cardin in Washington, D.C. Since February 12, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 18, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 8, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Harris, Pamela A.	2. Court or Organization Fourth Circuit Court of Appeals	3. Date of Report 05/08/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Circuit Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 05/08/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 04/24/2014
7. Chambers or Office Address Georgetown University Law Center 600 New Jersey Avenue, NW Washington, DC 20001		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Visiting Professor	Georgetown University Law Center, Washington, DC
2. Senior Advisor	Supreme Court Institute, Georgetown University Law Center, Washington, DC
3. Trustee	Norwood School, Bethesda, MD
4. Board of Directors	Constitutional Accountability Center, Washington, DC
5. Consultant	O'Melveny & Myers LLP, Washington, DC

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 2009	Georgetown University retirement plan with employer, no control
2. 1999	O'Melveny & Myers retirement plan with former law firm, no control
3. 1996	University of Pennsylvania retirement plan with former employer, no control

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Name of Person Reporting	Date of Report
Harris, Pamela A.	05/08/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2014	Georgetown University - teaching	\$17,500.00
2. 2013	O'Melveny & Myers - legal contractor	\$10,000.00
3. 2012	Georgetown University - teaching (2012-2103)	\$50,000.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2014	Google Inc. - salary, bonus, equity
2. 2013	Google Inc. - salary, bonus, equity
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)
☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

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Name of Person Reporting	Date of Report
Harris, Pamela A.	05/08/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

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Name of Person Reporting	Date of Report
Harris, Pamela A.	05/08/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. SunTrust cash account	A	Interest	J	T	Exempt				
2. Bank of America cash accounts	A	Interest	O	T					
3. Northern Trust cash accounts	A	Interest	M	T					
4. Northwestern Mutual - whole life insurance policies	D	Dividend	M	T					
5. Aberdeen Small Cap Fund		None	M	T					
6. Agilent Technologies Common	B	Dividend	L	T					
7. Alcatel Lucent SA (ADR) Common		None	J	T					
8. American Century Equity Growth Fund	A	Int./Div.	J	T					
9. American Funds EuroPacific Growth Fund	A	Int./Div.	J	T					
10. American Funds New Perspective Fund		None	K	T					
11. American International Group Inc. Common	A	Dividend	J	T					
12. Automatic Data Processing Common	C	Dividend	M	T					
13. BlackRock Large Cap Value Fund		None	M	T					
14. Broadridge Financial Solutions, Inc. Common	A	Dividend	K	T					
15. Cisco Systems Inc. Common	A	Dividend	K	T					
16. Clearbridge Equity Income Fund	B	Int./Div.	M	T					
17. Coca Cola Common	D	Dividend	M	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 J2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessed W = Estimated	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value			T = Cash Market	

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Name of Person Reporting	Date of Report
Harris, Pamela A.	05/08/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Place "(X)" after each asset exempt from prior disclosure	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Davis New York Venture Fund	C	Int./Div.	O	T						
19. DFA Emerging Markets Core Equity Portfolio Fund	C	Int./Div.	N	T						
20. DFA U.S. Core Equity 1 Portfolio Fund	E	Int./Div.	O	T						
21. Discover Financial Services Common	A	Dividend	K	T						
22. Eaton Vance Large-Cap Value Fund	A	Distribution	K	T						
23. EMC Corp. Common	A	Dividend	K	T						
24. Express Scripts Holdings Common		None	L	T						
25. Exxon Mobil Corp. Common	E	Dividend	O	T						
26. Fidelity Advisor Mid Cap II Fund		None	M	T						
27. Fidelity Advisor New Insights Fund		None	M	T						
28. Fidelity Freedom 2020 Fund		None	J	T						
29. Fidelity Managed Income Portfolio II Fund	A	Int./Div.	L	T						
30. First Eagle Global Fund	A	Int./Div.	K	T						
31. FlexShares iBoxx 5-Year Target Duration TIPS Index Fund	A	Int./Div.	K	T						
32. FlexShares Morningstar Global Upstream Natural Resources Index Fund	C	Int./Div.	M	T						
33. Franklin Federal Tax-Free Income Fund	C	Int./Div.	L	T						
34. Google Inc. Common		None	L	T						

1. Income Code Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessor W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

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Name of Person Reporting	Date of Report
Harris, Pamela A.	05/08/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
35. Howard County, MD Municipal Bond	C	Interest	L	T					
36. IBM Corp. Common	D	Dividend	M	T					
37. Intel Corp. Common	C	Dividend	L	T					
38. Ivy Asset Strategy Fund	A	Int./Div.	M	T					
39. Johnson & Johnson Common	D	Dividend	M	T					
40. Lord Abbett High Yield Municipal Bond Fund	D	Int./Div.	L	T					
41. McDonald's Corp. Common	B	Dividend	N	T					
42. Medtronic, Inc. Common	D	Dividend	N	T					
43. Merck & Co. Common	D	Dividend	N	T					
44. Microsoft Corp. Common	A	Dividend	J	T					
45. Morgan Stanley Common	A	Dividend	K	T					
46. Morgan Stanley Institutional Mid Cap Growth Fund	A	Int./Div.	K	T					
47. Munder Mid-Cap Core Growth Fund		None	M	T					
48. NetApp Inc. Common	A	Dividend	K	T					
49. Northern Global Real Estate Index Fund	D	Int./Div.	M	T					
50. Northern High Yield Fixed Income Fund	D	Int./Div.	M	T					
51. Northern International Equity Index Fund	E	Int./Div.	O	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less P = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$300,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code I (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
52. Northern Mid Cap Index Fund	B	Int./Div.	M	T					
53. Northern Tax-Advantaged Ultra-Short Fixed Income Fund	B	Int./Div.	M	T					
54. Nuveen All-American Municipal Bond Fund	C	Int./Div.	L	T					
55. Nuveen High Yield Municipal Bond Fund	B	Int./Div.	K	T					
56. Pfizer Inc. Common	D	Dividend	N	T					
57. PIMCO Total Return Fund	A	Int./Div.	K	T					
58. Prince George's County, MD Municipal Bonds	D	Interest	M	T					
59. Sandisk Corp. Common	B	Dividend	M	T					
60. Schlumberger Ltd. Common	C	Dividend	M	T					
61. SPDR S&P 500 ETF Trust	D	Int./Div.	M	T					
62. T. Rowe Price Growth Stock Fund	A	Int./Div.	K	T					
63. Texas Instruments Common		None	M	T					
64. Thornburg International Value Fund	E	Int./Div.	M	T					
65. TIAA-CREF Lifecycle 2025 Fund	B	Int./Div.	K	T					
66. Vanguard Emerging Markets Select Stock Fund	A	Int./Div.	L	T					
67. Vanguard Emerging Markets Select Stock Index Fund	B	Int./Div.	K	T					
68. Vanguard Explorer Fund	C	Int./Div.	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$5,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 Q = More than \$5,000,000	P2 = \$5,000,001 - \$25,000,000
3. Value Method Codes: (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	W = Estimated	S = Assessor	T = Cash Market

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Name of Person Reporting	Date of Report
Harris, Pamela A.	05/08/2014

VII. INVESTMENTS and TRUSTS -- Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Place "XY" after each asset exempt from prior disclosure	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
69. Vanguard Extended Market Index Fund	B	Int./Div.	K	T						
70. Vanguard International Growth Fund	A	Int./Div.	K	T						
71. Vanguard Mid-Cap Growth Fund	A	Int./Div.	K	T						
72. Vanguard Mid-Cap Index Fund		None	K	T						
73. Vanguard Prime Cap Core Fund		None	N	T						
74. Vanguard REIT Index Fund	C	Int./Div.	L	T						
75. Vanguard Small-Cap Index Fund	A	Int./Div.	K	T						
76. Vanguard Small-Cap Growth Index Fund	A	Int./Div.	K	T						
77. Vanguard Total Bond Market Index Fund	A	Int./Div.	J	T						
78. Vanguard Total International Stock Index Fund	A	Int./Div.	K	T						
79. Vanguard U.S. Growth Fund	A	Dividend	K	T						
80. Vanguard Wellington Fund	C	Int./Div.	K	T						
81. Vanguard Windsor II Fund	B	Dividend	L	T						
82. Zoetis Inc. Common	A	Dividend	K	T						

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

FINANCIAL DISCLOSURE REPORT
Page 9 of 10

Name of Person Reporting	Date of Report
Harris, Pamela A.	05/08/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

Page 10 of 10

Name of Person Reporting	Date of Report
Harris, Pamela A.	05/08/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Pamela A. Harris*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	1	106	462	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	10	470	804	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – personal residence	1	439	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		92	136				
Cash value-life insurance		173	097				
Other assets itemize:							
Thrift Savings Plan		336	745				
				Total liabilities			0
				Net Worth	13	618	244
Total Assets	13	618	244	Total liabilities and net worth	13	618	244
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

Aberdeen Small Cap Fund	\$ 227,624
Agilent Technologies	82,920
Alcatel Lucent SA (ADR)	155
American Century Equity Growth Fund	4,686
American Funds EuroPacific Growth Fund	12,189
American Funds Growth Fund of America	248,101
American Funds New Perspective Fund	30,691
American International Group Inc.	610
Automatic Data Processing	122,592
BlackRock Large Cap Value Fund	161,063
Broadridge Financial Solutions, Inc.	15,044
Cisco Systems Inc.	23,330
ClearBridge Equity Income Fund	121,594
Coca Cola Co.	162,800
Davis New York Venture Fund	578,095
DFA Emerging Markets Core Equity Portfolio Fund	263,556
DFA U.S. Core Equity 1 Portfolio FundMic	931,978
Discover Financial Services	37,175
Eaton Vance Large-Cap Value Fund	36,882
EMC Corp.	25,510
Express Scripts Holdings	83,645
Exxon Mobil Corp.	576,858
Fidelity Advisor Mid Cap II Fund	113,387
Fidelity Advisor New Insights Fund	154,964
Fidelity Freedom 2020 Fund	24
Fidelity Managed Income Portfolio II Fund	72,448
First Eagle Global Fund	47,072
FlexShares iBoxx 5-Year Target Duration TIPS Index Fund	23,929
FlexShares Morningstar Global Upstream Nat'l Resources Index Fund	158,707
Franklin Federal Tax-Free Income Fund	81,157
Google Inc.	50,421
Howard County, MD municipal bond	89,366
IBM Corp.	213,046
Intel Corp.	66,875
Ivy Asset Strategy Fund	199,781
Johnson & Johnson	199,920
Lord Abbett High Yield Municipal Bond Fund	92,033
McDonald's Corp.	469,248
Medtronic Inc.	280,032
Merck & Co.	345,180
Microsoft Corp.	11,958

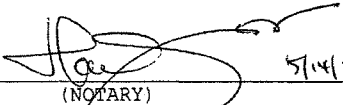
Morgan Stanley	40,841
Morgan Stanley Institutional Mid Cap Growth Fund	16,620
Munder Mid-Cap Core Growth Fund	125,426
NetApp Inc.	17,810
Northern Global Real Estate Index Fund	127,603
Northern High Yield Fixed Income Fund	127,108
Northern International Equity Index Fund	778,181
Northern Mid Cap Index Fund	163,253
Northern Tax-Advantaged Ultra-Short Fixed Income Fund	248,616
Nuveen All-American Municipal Bond Fund	64,947
Nuveen High Yield Municipal Bond Fund	27,339
Pfizer Inc.	264,843
PIMCO Total Return Fund	22,571
Prince George's County, MD municipal bond	141,171
Sandisk Corp.	170,380
Schlumberger Ltd.	162,880
SPDR S&P 500 ETF Trust	225,020
T. Rowe Price Growth Stock Fund	34,950
Texas Instruments	232,656
Thornburg International Value Fund	165,160
TIAA-CREF Lifecycle 2025 Fund	19,526
Vanguard Emerging Markets Select Stock Fund	63,703
Vanguard Emerging Markets Stock Index Fund	20,188
Vanguard Explorer Fund	44,617
Vanguard Extended Market Index Fund	22,870
Vanguard International Growth Fund	27,292
Vanguard Mid-Cap Growth Fund	37,128
Vanguard Mid-Cap Index Fund	49,079
Vanguard Prime Cap Core Fund	322,994
Vanguard REIT Index Fund	51,738
Vanguard Small-Cap Index Fund	36,660
Vanguard Small-Cap Growth Index Fund	24,711
Vanguard Total Bond Market Index Fund	5,503
Vanguard Total International Stock Index Fund	33,125
Vanguard U.S. Growth Fund	21,452
Vanguard Wellington Fund	30,253
Vanguard Windsor II Fund	65,948
Zoetis Inc.	19,996
Total Listed Securities	<u>\$ 10,470,804</u>

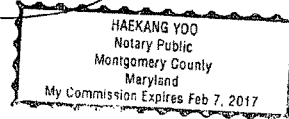
AFFIDAVIT

I, Pamela Ann Harris, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 14, 2014
(DATE)

Pamela Ann Harris
(NAME)

 5/14/2014
(NOTARY)



UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Pamela Pepper

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Eastern District of Wisconsin

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: United States Bankruptcy Court for the Eastern District of Wisconsin
United States Courthouse
517 East Wisconsin Avenue
Room 140
Milwaukee, Wisconsin 53202

Residence: Shorewood, Wisconsin

4. **Birthplace:** State year and place of birth.

1964; New Orleans, Louisiana

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

2001 – 2003, Marquette University; Graduate Certificate in Dispute Resolution, 2003
1986 – 1989, Cornell Law School; J.D., 1989
1982 – 1986, Northwestern University; B.S., 1986

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2005 – Present

United States Bankruptcy Court for the Eastern District of Wisconsin
United States Courthouse
517 East Wisconsin Avenue, Room 140
Milwaukee, Wisconsin 53202
Chief Judge (2010 – Present)
Bankruptcy Judge (2005 – Present)

2010 – 2013

American Bankruptcy Law Journal
954 La Mirada Street
Laguna Beach, California 92651
Associate Editor

2005 – 2009

United States Bankruptcy Court for the Southern District of Illinois
Melvin Price Federal Courthouse
750 Missouri Avenue
East St. Louis, Illinois 62201
Bankruptcy Judge

2001 – 2005

Marquette Law School
1215 West Michigan Street
Milwaukee, Wisconsin 53233
Adjunct Professor

2000 – 2005

Pamela Pepper, Attorney at Law, S.C.
731 North Jackson Street, Suite 800
Milwaukee, Wisconsin 53202
Owner/Sole Practitioner

1998 – 2000

Cubbe & Pepper, Ltd.
735 North Water Street
Milwaukee, Wisconsin 53202
Partner

1996 – 2000

YMCA of Metropolitan Milwaukee
161 West Wisconsin Avenue, Suite 4000
Milwaukee, Wisconsin 53203
Aerobics Instructor

1997 – 1998

Pamela Pepper, Attorney at Law, S.C.
3127 West Wisconsin Avenue
Milwaukee, Wisconsin 53208
Owner/Sole Practitioner

April – October 1997

Law Office of Robin Shellow
324 West Vine Street
Milwaukee, Wisconsin 53212
Associate

1994 – 1997

United States Attorney's Office for the Eastern District of Wisconsin
United States Courthouse
517 East Wisconsin Avenue, Room 530
Milwaukee, Wisconsin 53202
Assistant United States Attorney

1990 – 1994

United States Attorney's Office for the Northern District of Illinois
United States Courthouse
219 South Dearborn, Suite 500
Chicago, Illinois 60604
Assistant United States Attorney

Summer 1990

Capell, Howard, Knabe & Cobbs (now known as Capell Howard PC)
150 South Perry Street
Montgomery, Alabama 36104
Summer Associate

1989 – 1990

Eleventh Circuit Court of Appeals
Frank M. Johnson, Jr. Federal Courthouse
One Church Street
Montgomery, Alabama 36104
Law Clerk to Honorable Frank J. Johnson, Jr. (deceased)

Summer 1989

Jones, Day, Reavis & Pogue (now known as Jones Day)
77 West Wacker
Chicago, Illinois 60601
Summer Associate

August 1988 – May 1989
Cornell Law School
Myron Taylor Hall
Ithaca, New York 14853
Teaching Assistant to Professor Gary Simson

Summer 1988
Jones, Day, Reavis & Pogue (now known as Jones Day)
599 Lexington Avenue
New York, New York 10022
Summer Associate

December 1987
People's Rexall Drug Store
407 North Main
Leland, Mississippi 38756
Gift-wrapper/sales clerk

Summer 1987
Adams & Reese, LLP
One Shell Square
701 Poydras Street, Suite 4500
New Orleans, Louisiana 70139

Other affiliations (uncompensated):

2009 – Present
National Conference of Bankruptcy Judges
954 La Mirada Street
Laguna Beach, California 92651
Secretary (2009 – Present)
Seventh Circuit Governor (2009 – 2012)

2011 – Present
American Bankruptcy Institute
66 Canal Center Plaza
Suite 600
Alexandria, Virginia 22314
Board of Directors (2012 – Present)
C.A.R.E. Advisory Board (2011 – Present)

2007 – Present
Eastern District of Wisconsin Bar Association
424 East Wells Street
Milwaukee, Wisconsin 53202

Ex-Officio Board Member (2007 – Present)
 Founding Board Member (2002)

2002 – 2006
 Milwaukee Bar Association
 424 East Wells Street
 Milwaukee, Wisconsin 53202
 President (2005 – 2006)
 President-Elect (2004 – 2005)
 Vice-President (2003 – 2004)
 Board of Directors (2002 – 2003)

Fiscal Years 2002 – 2005
 State Bar of Wisconsin
 5302 Eastpark Boulevard
 Madison, Wisconsin 53718
 Secretary (Fiscal Year 2005)
 Chair, Board of Governors (Fiscal Years 2002 – 2004)

2003 – 2005
 Wisconsin State Public Defender
 315 North Henry Street
 Second Floor
 Madison, Wisconsin 53703
 Board of Directors

2003 – 2004
 Association for Women Lawyers
 3322 North 92nd Street
 Milwaukee, Wisconsin 53222
 Treasurer

2000 – 2005
 Federal Defender Services of Wisconsin, Inc.
 517 East Wisconsin Avenue
 Suite 182
 Milwaukee, Wisconsin 53202
 Vice-chair, Board of Directors (2000 – 2005)
 Founding Board Member (2000)

1997 – approximately 2000
 Horizons, Inc.
 (merged with the Wisconsin Women's Center in 2009, whose address follows)
 728 North James Lovell Street

Milwaukee, Wisconsin 53233
Board of Directors

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement

Eastern District of Wisconsin Bar Association John W. Reynolds Community Building Award, 2006

State Bar of Wisconsin President's Award for chairing the State Bar Board of Governors, 2005

State Bar of Wisconsin CLE Seminars mentorship award, 2005

Distinguished Service Award from the Milwaukee Bar Association for assisting in creating the Solo But Not Alone Breakfast Group, 2001

Cornell Law School – co-winner, Sutherland Moot Court, 1988 – 1989

Note Editor, Cornell Law Review, 1988 – 1989

Northwestern University – Dean's List, 1985 – 1986

Northwestern University – scholarship recipient, 1982

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Advanced Consumer Bankruptcy Practice Institute
Faculty Member (Approximately 2010 – Present)

American Bankruptcy Institute (Approximately 2008 – Present)
Education Director, Consumer Bankruptcy Committee (2008 – 2010)
Co-chair, Consumer Bankruptcy Committee (2010 – 2012)
Board of Directors (2012 – Present)

Membership Committee (2012 – Present)
C.A.R.E. Advisory Board (2011 – Present)

American Bar Association (2000 – Present)

Association for Women Lawyers (2000 – Present)
Program Director (2000 – 2001)
Professionalism Director (2001 – 2002)
Program Director (2002 – 2003)
Treasurer (2003 – 2004)

Eastern District of Wisconsin Bar Association (2002 – Present)
Founding Board Member (2002)
Co-Program Chair (2002 – 2005)
Ex-officio Board Member (2007 – Present)

Federal Defender Services of Wisconsin, Inc. (2000 – 2005)
Founding Board Member (2000)
Vice-Chair (2000 – 2005)

Human Resources Advisory Council of the Administrative Office of U.S. Courts
Bankruptcy Judge Representative (2009 – 2012)

Local Rules Committee for the Eastern District of Wisconsin (1999 – 2000)

Milwaukee Bar Association (2000 – Present)
Chair, Law Practice Management committee (2000 – 2002)
Chair, Judicial Selection Committee (2002)
Chair, Criminal Law Section (2003 – 2005)
Board of Directors (2002 – 2003)
Vice-President (2003 – 2004)
President-Elect (2004 – 2005)
President (2005 – 2006)
Co-chair, Bankruptcy Bench Bar Committee (Approximately 2009 – 2011)

NACTT (National Association of Chapter 13 Trustees) Academy for Consumer
Bankruptcy Education (Approximately 2009 – Present)

National Association of Criminal Defense Lawyers (2000 – 2005)

National Conference of Bankruptcy Judges (2005 – Present)
Secretary (2013 – 2014)
Chair, Education Committee for the Chicago Conference (2013 – 2014)
Education Committee for the Atlanta Conference (2012 – 2013)
Cost Containment Task Force (2011)

Education Committee for the San Diego conference (2011 – 2012)
 Associate Editor, American Bankruptcy Law Journal (2010 – 2013)
 Seventh Circuit Governor (2009-2012)
 Schwartz Round Table Committee (2009 – 2011)
 Education Committee for the Tampa conference (2010 – 2011)
 Education Committee for the Las Vegas conference (2009 – 2010)
 American Bankruptcy Law Journal Editorial Advisory Committee (2009 – 2013)

OSCAR Working Group (a judicial conference working group considering policy for law clerk hiring) (2012 – Present)

Seventh Circuit Bar Association (2000 – Present)
 Circuit Rider Committee (2000 – 2002)
 General Chair, Circuit Rider Committee (2003 – 2005)

State Bar of Wisconsin (1995 – Present)
 Secretary (2002 – 2004)
 Chair of the Board of Governors (2005)

State Bar Special Committee on Multi-Disciplinary Practice (now defunct) (2000)
 Chair, Supreme Court Rules Committee

Thomas Fairchild Inns of Court (2000 – Present)
 (On hiatus 2013 – 2014 year)

Wisconsin Association of Criminal Defense Lawyers (2005)

Wisconsin State Public Defender (2003 – 2005)
 Board of Directors (2003 – 2005)
 Chair, Rules Committee (2004)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

1990, Illinois
 1995, Wisconsin

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Illinois Supreme Court, 1990
 United States District Court for the Northern District of Illinois, 1991
 United States Court of Appeals for the Seventh Circuit, 1991
 Wisconsin Supreme Court, 1995
 United States District Court for the Eastern District of Wisconsin, 1997
 United States District Court for the Western District of Wisconsin, 2002

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Horizons, Inc. (Approximately 1997 – 2000)
 Board of Directors

In addition, I have made small financial contributions to the following organizations in the past, and, as a result, they may consider me to have been a member:

Amnesty International

Oxfam International

People for the Ethical Treatment of Animals

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Judge Dale E. Ihlenfeldt Bankruptcy Award, Janet L. Medlock, Clerk of Court, United States Bankruptcy Court for the Eastern District of Wisconsin (anonymously), Eastern District of Wisconsin Bar Association Newsletter ("The Docket"), March 2014. Copy supplied.

Hearsay and Federal Rule of Evidence 801, American Bar Association, Section of Litigation, Bankruptcy & Insolvency E-Newsletter, October 15, 2013. Copy supplied.

Letter to the Editor, *Primer for Civil Lawyers on the Criminal Process Still Timely, Relevant Today*, Wis. Lawyer, July 2013. Copy supplied.

Issues Surrounding the Use of Lay Witnesses, American Bar Association, Section of Litigation, Bankruptcy & Insolvency E-Newsletter, March 13, 2013. Copy supplied.

Particular Evidence Problems with Appraisals, Part III: Expert Witnesses, American Bar Association, Section of Litigation, Bankruptcy & Insolvency E-Newsletter, December 10, 2012. Copy supplied.

Particular Evidence Problems with Appraisals, Part II, American Bar Association, Section of Litigation, Bankruptcy & Insolvency E-Newsletter, August 21, 2012. Copy supplied.

For Both New and Experienced Lawyers – Particular Evidence Problems with Appraisals, American Bar Association, Section of Litigation, Bankruptcy & Insolvency E-Newsletter, May 30, 2012. Copy supplied.

Letter to the Editor, *Milwaukee Judges Tired of Preparer Misconduct, A New Policy Taking Effect Jan. 1 Will Limit the Amount that Preparers Can Charge for Their Services*, Milwaukee Journal Sentinel, December 3, 2011. Copy supplied.

2011 EDWBA Award Recipients: Hon. Susan V. Kelley, U.S. Bankruptcy Court, Eastern District of Wisconsin (anonymously), Eastern District of Wisconsin Bar Association Newsletter ("The Docket"), March 2011. Copy supplied.

Ihlenfeldt Award Recognizes Bruce G. Arnold and Peter C. Blain, Eastern District of Wisconsin Bar Association Newsletter ("The Docket"), April 2010. Copy supplied.

Elements: The Roadmap for Your Litigation Trip, The NACTT Academy for Consumer Bankruptcy Education, February 1, 2010. Copy supplied.

Zen and the Art of Bankruptcy Practice, The Circuit Rider (Seventh Circuit Bar Association newsletter), January 2008. Copy supplied.

Some Effects of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, The Circuit Rider (Seventh Circuit Bar Association newsletter), November 2006. Copy supplied.

Profile: United States District Court Judge Thomas J. Curran, The Circuit Rider (Seventh Circuit Bar Association newsletter), November 2006. Copy supplied.

Milwaukee AUSA Aiding Development of the Rule of Law in Iraq, The Circuit Rider (Seventh Circuit Bar Association newsletter), May 2006. Copy supplied.

President's Column: A Successful Year of Change at the MBA, The Messenger (Milwaukee Bar Association newsletter), May 2006. Copy supplied.

President's Column: Make Your Vote Count in the MBA, The Messenger (Milwaukee Bar Association newsletter), April 2006. Copy supplied.

President's Column: Wealth of Resources Within the MBA, The Messenger (Milwaukee Bar Association newsletter), February 2006. Copy supplied.

President's Column: From Jim to Jim, MBA Remains Strong, The Messenger (Milwaukee Bar Association newsletter), January 2006. Copy supplied.

President's Column: Reap the Benefits of Your MBA Membership, The Messenger (Milwaukee Bar Association newsletter), November 2005. Copy supplied.

President's Column: Access to Justice, The Messenger (Milwaukee Bar Association newsletter), October 2005. Copy supplied.

President's Column: Our Courts: Let's Support Them, The Messenger (Milwaukee Bar Association newsletter), September 2005. Copy supplied.

President's Column: Lawyers: We Can Help, The Messenger (Milwaukee Bar Association newsletter), August 2005. Copy supplied.

President's Column: Law: A Profession to be Proud Of, The Messenger (Milwaukee Bar Association newsletter), July 2005. Copy supplied.

A Practice of One's Own – Solo Practice Balances Freedom, Wis. Law Journal, April 20, 2005. Copy supplied.

A Practice of One's Own – As an Attorney, Flying Solo Does not Mean Loneliness Will Take Wing, Wis. Law Journal, March 16, 2005. Copy supplied.

A Practice of One's Own – Organization is an Attainable Goal that Requires Patience, Wis. Law Journal, January 19, 2005. Copy supplied.

A Practice of One's Own – There's No Place Like Home for the Holidays – Work Will Be There When You Get Back, Wis. Law Journal, December 15, 2004. Copy supplied.

Diane Sykes Makes Progress Toward Appointment to Seventh Circuit, The Circuit Rider (Seventh Circuit Bar Association newsletter), Winter 2004. Copy supplied.

A Practice of One's Own – A Sole Practitioner's 'Cover' Story, Wis. Law Journal, November 17, 2004. Copy supplied.

A Practice of One's Own – Screening Clients Is Important Part of Being Attorney, Wis. Law Journal, October 20, 2004. Copy supplied.

A Practice of One's Own – Discussing Your Fees Money With Clients, Wis. Law Journal, September 22, 2004. Copy supplied.

Recap: 52nd Annual Meeting of the Seventh Circuit Bar--Sobering Session on Patriot Act Packs the House, The Circuit Rider (Seventh Circuit Bar Association newsletter), Summer 2003. Copy supplied.

Recap: 52nd Annual Meeting of the Seventh Circuit Bar--Judicial Misconduct Panel, The Circuit Rider (Seventh Circuit Bar Association newsletter), Summer 2003. Copy supplied.

Electronic Filing Now Makes Filing a Breeze in Western District of Wisconsin, The Circuit Rider (Seventh Circuit Bar Association newsletter), Spring 2003. Copy supplied.

Outgoing Chief Judge Stadtmueller Leaves Impressive Legacy, The Circuit Rider (Seventh Circuit Bar Association newsletter), Fall 2002. Copy supplied.

Green Bay Seminar Prepares Practitioners for Federal Criminal Practice in New Court, The Circuit Rider (Seventh Circuit Bar Association newsletter), Summer 2002. Copy supplied.

General Order Will Govern Assignment of Cases to Green Bay Division, The Circuit Rider (Seventh Circuit Bar Association newsletter), Summer 2002. Copy supplied.

Judge Griesbach Joins the Eastern District of Wisconsin, The Circuit Rider (Seventh Circuit Bar Association newsletter), Summer 2002. Copy supplied.

Amy J. St. Eve Confirmed in Northern District of Illinois, The Circuit Rider (Seventh Circuit Bar Association newsletter), Summer 2002. Copy supplied.

Welcome to Incoming President William H. Levit, Jr., The Circuit Rider (Seventh Circuit Bar Association newsletter), Summer 2002. Copy supplied.

Farewell and Thanks to Past President Karen Layng, The Circuit Rider (Seventh Circuit Bar Association newsletter), Summer 2002. Copy supplied.

The following is a list of articles I have edited for the American Bankruptcy Law Journal:

Jay Lawrence Westbrook, *An Empirical Study of the Implementation in the United States of the Model Law on Cross Border Insolvency*, 87 Am. Bankr. L.J. 247 (2013). Copy supplied.

Laura B. Bartell, *Pension Plan Loans and Means Testing – The Pernicious Endurance of Villarie*, 87 Am. Bankr. L.J. 89 (2013). Copy supplied.

Jared A. Wilkerson, *Defending the Current State of Section 363 Sales*, Am. Bankr. L.J. 591 (2012). Copy supplied.

Jason Iuliano, *An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard*, 86 Am. Bankr. L.J. 495 (2012). Copy supplied.

Joseph Spooner, *Long Overdue: What the Belated Reform of Irish Personal Insolvency Law Tells Us About Comparative Consumer Bankruptcy*, 86 Am. Bankr. L.J. 243 (2012). Copy supplied.

Troy A. McKenzie, *Getting to the Core of Stern v. Marshall: History, Expertise, and the Separation of Powers*, 86 Am. Bankr. L.J. 23 (2012). Copy supplied.

Eric G. Behrens, Stern v. Marshall: *The Supreme Court's Continuing Erosion of Bankruptcy Court Jurisdiction and Article I Courts*, 85 Am. Bankr. L.J. 387 (2011). Copy supplied.

Laura B. Bartell, *Making Assumptions About the Individual Debtor's Right to Assume Under §365(p)(2)*, 85 Am. Bankr. L.J. 265 (2011). Copy supplied.

Jason S. Brookner, *Pacific Lumber and Philadelphia Newspapers: The Eradication of a Carefully Constructed Statutory Regime Through Misinterpretation of Section 1129(B)(2)(A) of the Bankruptcy Code*, 85 Am. Bankr. L.J. 127 (2011). Copy supplied.

Lynn M. LoPucki, Joseph W. Doherty, *Routine Illegality Redux*, 85 Am. Bankr. L.J. 35 (2011). Copy supplied.

Thomas M. Mackey, *Post-Footstar Balancing: Toward Better Constructions of § 365(C)(1) & Beyond*, 84 Am. Bankr. L. J. 405 (2010). Copy supplied.

David Gray Carlson, *The Federal Rules of Bankruptcy Procedure in Reorganization Cases: Do They Have a Constitutional Dimension?*, 84 Am. Bankr. L.J. 251 (2010). Copy supplied.

Stephen J. Lubben, *The Bankruptcy Code Without Safe Harbors*, 84 Am. Bankr. L. J. 123 (2010). Copy supplied.

Philip Tedesco, *In Forma Pauperis in Bankruptcy*, 84 Am. Bankr. L.J. 79 (2010). Copy supplied.

Leslie R. Masterson, *Rolling the Dice: The Risks Awaiting Compulsive Gamblers in Bankruptcy Court*, 83 Am. Bankr. L. J. 749 (2009). Copy supplied.

Rafael I. Pardo, Michele R. Lacey, *The Real Student-Loan Scandal: Undue Hardship Litigation*, 83 Am. Bankr. L.J. 179 (2009). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

On July 3, 2012, the members of the NCBJ Cost Containment Task Force prepared an amended and updated report on the efforts bankruptcy courts around the country were making to share and reduce costs. I was a member of that task force, and contributed to the amended and updated report. Copy supplied.

On December 30, 2011, the NCBJ Cost Containment Task Force (many of whom were among the group that prepared the above-referenced white paper dated June 21, 2011) prepared a report on cost sharing among the federal courts, entitled "Task Force Report on Cost Sharing Among the Federal Courts: Options and Opportunities." As a member of that task force, I contributed to the report. Copy supplied.

A group of members of the National Conference of Bankruptcy Judges ("NCBJ") prepared, at the request of the president of the organization, a white paper dated June 21, 2011, discussing the cost containment efforts of bankruptcy courts, relative to measures the Judicial Conference was considering regarding consolidating bankruptcy and district court clerk's offices and eliminating Bankruptcy Appellate Panels ("BAPs"). As a member of that task force, I contributed to the work on the white paper. Copy supplied.

As part of the training for new bankruptcy judges, I participated in the creation of an educational video. *Evidence in the Bankruptcy Courts*, David H. Coar; Pamela Pepper, Federal Judicial Center, Washington, D.C. June 1, 2009. Video supplied.

I contributed to the April 2008 edition of The Docket, the Eastern District of Wisconsin Bar Association's newsletter. Copy supplied.

I contributed to the March 2002 edition of The Circuit Rider, the Seventh Circuit Bar Association newsletter. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

American Bankruptcy Institute's Commission to Study the Reform of Chapter 11, American Bankruptcy Institute, 2013 Spring Meeting, National Harbor, Maryland. April 19, 2012. Although a recording was made, the portion of the event related to my statements was not recorded. Notes attached.

Updated Model Employment Dispute Resolution Plan and Program, the Administrative Office of the United States Courts, Washington, D.C. October 22, 2010. Video supplied.

January 2004: I testified before the Criminal Subcommittee of the Judiciary Committee of the State of Wisconsin Legislature, regarding Assembly Bill 616, which related to the compensation of State Public Defender panel attorneys and standards for indigent status. I have no notes, transcript or recording of this testimony.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

2006 – Present: I have presided over several Naturalization Ceremonies in which I delivered opening remarks prior to administering the oath of citizenship. The ceremonies take place at the federal courthouse in Milwaukee, Wisconsin. I have no notes, transcript or recording, but press coverage is supplied where available. The United States District Court for the Eastern District of Wisconsin assigns these proceedings; Clerk of Court Jon Sanfilippo, United States District Court for the Eastern District of Wisconsin, 517 East Wisconsin Avenue, Room 362, Milwaukee, WI 53202.

March 5, 2014: Presenter, *Winning from the Beginning: Building a Winning Case from Complaint to Closing Argument*, Eastern District of Wisconsin Bar Association, Milwaukee, Wisconsin. Outline, PowerPoint, and handout supplied.

February 28, 2014: Panelist, *National Case Law Update*, Bankruptcy, Insolvency and Creditor's Rights Section of the State Bar of Wisconsin, Annual Retreat, Kohler, Wisconsin. I have no notes, transcript or recording. The address of the State Bar of Wisconsin is 5302 Eastpark Boulevard, Madison, WI 53718.

February 27, 2014: Panelist, *Wisconsin Case Law Update – Cases Important to our Judiciary*, Bankruptcy Insolvency and Creditor's Rights Section of the State Bar of Wisconsin, Annual Retreat, Kohler, Wisconsin. Handout supplied.

February 13, 2014: Presenter, *But I Need to Get It In, Judge! Practical Application of the Rules of Evidence in the Context of a Bankruptcy Proceeding*, Fifth Circuit Bankruptcy Bench-Bar Conference, New Orleans, Louisiana. Outline, fact pattern and scripts supplied.

February 7, 2014: Moderator, *Ethics: The New World Order – A Comparison of Ethical Issues with Respect to Retention and Compensation of Restructuring Professionals in the U.S./Caribbean*, American Bankruptcy Institute, Caribbean Insolvency Symposium, San Juan, Puerto Rico. Handout supplied.

January 31, 2014: Panelist, *2014 Milwaukee Bar Association View from the Bankruptcy Bench*, Milwaukee Bar Association CLE, Milwaukee, Wisconsin. Handout supplied.

December 6, 2013: Panelist, *Has BAPCPA Increased Distributions to Creditors in Consumer Cases?*, American Bankruptcy Institute, Winter Leadership Conference, Rancho Palos Verdes, California. The panel discussed the results of an empirical study conducted by Professor Lois Lupica of the University of Maine Law School, looking at the recoveries of various classes of creditors after the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act. I have no notes, transcript or recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

November 18, 2013: Presenter, *Common Evidentiary Issues in Bankruptcy - Pocket Guide to Common Evidentiary Issues in Bankruptcy (If You Have a BIG Pocket)*, Federal Judicial Center, Phase II Orientation for Newly Appointed Bankruptcy Judges, Washington, D.C. Handout supplied.

November 5, 2013: Presenter, *It All Depends on Your Point of View... or Does it? Select Ethics Issues for Trustees*, Office of the United States Trustee, Region 11 Chapter 7 Panel Trustee Seminar, Chicago, IL. Outline supplied.

October 9, 2013: Presenter, *Evidence for Bankruptcy Lawyers (Yes, the Rules of Evidence Do Apply!)*, Minnesota Bankruptcy Institute, CLE Bankruptcy Conference, Minneapolis, Minnesota. Outline and handout supplied.

October 3, 2013: Presenter, *Clear as Mud? Recent Developments in the Seventh Circuit Regarding the Bankruptcy Court's Authority to Enter Final Orders*, Western District of Wisconsin Bankruptcy Bar Association, Madison, Wisconsin. Outline supplied.

September 20, 2013: Presenter, *It All Depends on Your Point of View... or Does it? Select Ethics Issues for Trustees*, Office of the United States Trustee, Region 11 Chapter 7 Panel Trustee Seminar, Milwaukee, Wisconsin. Outline supplied.

September 19, 2013: Speaker, *What the Eastern District of Wisconsin Bar Association Can Do For You: A Program Designed for Lawyers in Their First Three Years of Practice*, Eastern District of Wisconsin Bar Association, Milwaukee, Wisconsin. At this orientation program for young lawyers, I spoke in my role as chief bankruptcy judge and talked about the education programs the organization provides, the opportunity to interact with judges, and the opportunities to meet and learn from more experienced members of the federal practice family. I have no notes, transcript or recording. The address for the Eastern District of Wisconsin Bar Association is 424 East Wells Street, Milwaukee, WI 53202.

August 23, 2013: Panelist, *Chapters 7 & 13 – Consumer Evidence*, Midwest Regional Bankruptcy Seminar, Cincinnati, Ohio. The panel discussed the most common evidence issues arising in consumer bankruptcy cases, such as the "business records" exception to the hearsay rule and evidentiary issues involved with introduction and admission of appraisal reports. I have no notes, transcript or recording. The address of the Midwest Regional Bankruptcy Seminar is c/o Cincinnati Bar Association/CLE Dept., 225 East Sixth Street, Second Floor, Cincinnati, OH 45202.

August 22, 2013: Presenter, *Even Bankruptcy Lawyers Need to Follow the Rules of Evidence: Do's and Don'ts to Live By*, Midwest Regional Bankruptcy Seminar, Cincinnati, Ohio. Outline and handout supplied.

August 12, 2013: Panelist, *2013 Evidence Update*, Federal Judicial Center, Bankruptcy Workshop, San Diego, California. Handout supplied.

July 24, 2013: Speaker, luncheon address on bankruptcy to the Eastern District of Wisconsin Bar Association's Summer Youth Institute, Milwaukee, Wisconsin. I talked with the students about the definition of bankruptcy and the kinds of cases one sees in bankruptcy court, as well as a bankruptcy court's day-to-day activities. I have no notes, transcripts or recording. The address of the Eastern District of Wisconsin Bar Association is 424 East Wells Street, Milwaukee, WI 53202.

July 20, 2013: Panelist, *Judges' Roundtable*, American Bankruptcy Institute, Annual Southeast Bankruptcy Workshop, Amelia Island, Florida. The panel discussed avoiding *ex parte* communications with chambers staff, the importance of debtors' counsel reviewing the schedules, conflicts of interest, and professional courtesy. I have no notes, transcript or recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

July 19, 2013: Panelist, *I Have a Bad Feeling About This: When Bankruptcy and Criminal Law Collide*, American Bankruptcy Institute, Annual Southeast Bankruptcy Workshop, Amelia Island, Florida. PowerPoint supplied.

June 16, 2013: Panelist, *Experts Under Examination*, American Bankruptcy Institute, Central States Conference, Traverse City, Michigan. PowerPoint supplied.

June 16, 2013: Co-facilitator, *Breakfast with a Judge*, American Bankruptcy Institute, Central States Conference, Traverse City, Michigan. While I can't recall with certainty the topics the lawyers were interested in discussing, I believe that one of the main topics was the appropriate way for lawyers to interact with chambers staff, in order to avoid improper *ex parte* communications. My job was to facilitate discussion among the lawyers. I have no notes, transcript or

recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

May 16, 2013: Panelist, *Knowledge Seminar: An Insider Look at Bankruptcy*, Administrative Office of the United States Courts, Office of Public Affairs, Washington, D.C. Video supplied.

April 25, 2013: Panelist, *Pre-Bankruptcy Planning: Where is the Line Between Prudence and Fraud?*, Eastern District of Wisconsin Bar Association, Annual Meeting, Milwaukee, Wisconsin. I have no notes, transcript or recording. The address for the Eastern District of Wisconsin Bar Association is 424 East Wells Street, Milwaukee, WI 53202.

April 15, 2013: Panelist, *2013 Evidence Update*, Federal Judicial Center, National Workshop for Bankruptcy Judges I, New Orleans, Louisiana. Handout supplied.

February 28, 2013: Panelist, *Wisconsin Case Law Update – Cases Important to our Judiciary*, Bankruptcy Insolvency and Creditor's Rights Section of the State Bar of Wisconsin, Annual Retreat, Kohler, Wisconsin. Handout supplied.

February 17-19, 2013: Faculty member, Advanced Consumer Bankruptcy Practice Institute, American Bankruptcy Institute, Kansas City, Missouri. This program uses pre-prepared materials created by the program's founders, Bankruptcy Judge Keith Lundin and Attorney Hank Hildebrand. I presented a lecture on witness preparation, viewed students' mock trials, and provided them with feedback on trial skills. I have no notes, transcript or recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

February 1, 2013: Panelist, *A View from the Bench – Bits and Pieces*, Milwaukee Bar Association CLE, Milwaukee, Wisconsin. Handout supplied.

January 4, 2013: Panelist, *Evidence, Experts and Advocacy – Be Your Best! Even Old Dogs Can Learn New Tricks*, National CLE Conference of the Law Education Institute Conference, Snowmass, Colorado. Outline and handout supplied.

January 3, 2013: Panelist, *The Viability of Chapter 13 – Broad Implications Across the Chapters Affecting Us All*, National CLE Conference of the Law Education Institute Conference, Snowmass, Colorado. Outline supplied.

November 29, 2012: Debater/panelist, *Great Debates – Since Most Debtors Default in Chapter 13 Plans Before They Reach Completion, Are Modifications*

Needed to the Law's Rehabilitation Goals?, ABI Winter Leadership, Tucson, Arizona. Notes supplied.

November 14, 2012: Actor/panelist, *Ethics--BICR Players Present*, State Bar of Wisconsin 2012 Annual Bankruptcy Update, Milwaukee, Wisconsin. The panelists acted out scenarios involving ethical issues surrounding clients who do not want to disclose inherited assets, clients who pay family member creditors before filing bankruptcy, the line between family "loans" and family "gifts," representing both debtors in cases where spouses are divorcing, and attorneys' employees who are owed money by bankruptcy clients. I have no notes, transcript or recording. The address for the State Bar of Wisconsin is 5302 Eastpark Boulevard, Madison, WI 53718.

November 2, 2012: Co-presenter, *But I Need to Get It In, Judge! Evidence for the Bankruptcy Lawyer*, Capital Region and Central New York Bankruptcy Bar Association, Annual Bankruptcy Conference, Cooperstown, New York. Outline, fact pattern and scripts supplied.

October 26, 2012: Presenter, *What Do You Mean We Need Evidence? It's Bankruptcy Court! An Interactive Presentation on Common Evidentiary issues in Bankruptcy*, National Conference of Bankruptcy Judges, Annual Meeting, San Diego, California. Outline and handout supplied.

October 15, 2012: Presenter, *Common Evidentiary Issues in Bankruptcy - Pocket Guide to Common Evidentiary Issues in Bankruptcy (If You Have a BIG Pocket)*, Federal Judicial Center, Phase II Orientation for Newly Appointed Bankruptcy Judges, Washington, D.C. Handout supplied.

September 29, 2012: Panelist, *Rules Committee Conference on Mortgage Rules and Forms*, Mortgage Mini Conference, Judicial Conference of the United States, Advisory Committee on Bankruptcy Rules, Portland, Oregon. Handout supplied.

September 13, 2012: Speaker, *Introduction to the Eastern District of Wisconsin, Eastern District Bar Association*, Milwaukee, Wisconsin. I spoke to young lawyers about reasons to become members of the organization. I have no notes, transcript or recording. The address of the Eastern District of Wisconsin Bar Association is 424 East Wells Street, Milwaukee, WI 53202.

September 6, 2012: Presenter, *Tips for Successful Trial Practice*, Western District Bankruptcy Bar Association, Madison, Wisconsin. Outline supplied.

August 1, 2012: Co-facilitator with Hon. Robert E. Grossman, *Small Group Discussions*, Federal Judicial Center, National Workshop for Bankruptcy Judges II, Santa Fe, New Mexico. While I don't recall with certainty, I believe that Judge Grossman and I facilitated a discussion about the morning's programs on the

impact of the Supreme Court's decision in *Stern v. Marshall* on bankruptcy judges' ability to enter final orders. I have no notes, transcript or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, D.C. 20002.

July 9-11, 2012: Faculty, Advanced Consumer Bankruptcy Practice Institute, New Orleans, Louisiana. This program uses materials created by the program's founders, Bankruptcy Judge Keith Lundin and Attorney Hank Hildebrand. I presented a lecture on witness preparation, viewed students' mock trials, and provided them with feedback on trial skills. I have no notes, transcript or recording. The sponsoring organization was the National Association of Chapter Thirteen Trustees; the address for the Executive Director is 1 Windsor Cove, Suite 305, Columbia, SC 29223.

June 28, 2012: Co-facilitator with Hon. Randy Doub, *Small Group Discussions*, Federal Judicial Center, Conference for Chief Bankruptcy Judges, Washington, D.C. Judge Daub and I facilitated a discussion about how to encourage collegiality and provide incentives to court personnel to perform at high levels. I have no notes, transcript or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, D.C. 20002.

June 9, 2012: Co-facilitator, *Breakfast with a Judge*, American Bankruptcy Institute, Central States Conference, Traverse City, Michigan. I cannot recall with certainty the topics discussed, although I believe that there may have been discussion of the procedures various districts use to strip wholly-unsecured, junior mortgage liens. My job was to facilitate discussion among the lawyers. I have no notes, transcript or recording. The sponsoring organization was the American Bankruptcy Institute; its address is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

June 7, 2012: Panelist, *More Claims Issues in Consumer Cases: Procedural Rules/Statutes that Impact Claims*, American Bankruptcy Institute, Central States Conference, Traverse City, Michigan. Handout supplied.

June 1, 2012: Presenter, *This Is Not My Beautiful House! Evidence Issues Related to Challenges to Standing*, Fifth Annual Frank W. Koger Bankruptcy Symposium, Kansas City, Missouri. Handout supplied.

May 11, 2012: Presenter, *Allonges? We Don't Need No Stinking Allonges! Evidence Issues Related to Challenges to Standing*, Columbus Bankruptcy Law Institute, Columbus, Ohio. Handout supplied.

May 3, 2012: Panelist, *Dealing with the Adversarial Relationship: Litigating and Defending a Successful Adversary from Drafting the Complaint to the Final*

Order, Bankruptcy Association of Southern Illinois Conference, Fairview Heights, Illinois. Outline and handout supplied.

April 28, 2012: Presenter, *Allonges? We Don't Need No Stinking Allonges! Evidence Issues Related to Challenges to Standing*, National Association of Consumer Bankruptcy Attorneys, Annual Convention, San Antonio, Texas. Handout supplied.

April 21, 2012: Panelist, *The Do's and Don'ts of Effective Oral and Written Advocacy*, American Bankruptcy Institute, Annual Spring Meeting, Washington, D.C. Handout supplied.

February 22, 2012: Presenter, *Winning from the Beginning, Building a Winning Case from Complaint to Closing Argument*, Eastern District Wisconsin Bar Association, Milwaukee, Wisconsin. PowerPoint supplied.

February 5, 2012: Facilitator, *Talking Points for Schwartz Roundtable – Consumer Issues*, National Conference of Bankruptcy Judges, Annual Meeting, San Diego, California. Handout supplied.

February 3, 2012: Panelist, *Defaults, Deals and Damages: Tips for Settlements and Default Judgments*, A View from the Bench: A Roundtable Discussion, Milwaukee Bar Association CLE, Milwaukee, Wisconsin. Handout supplied.

January 18-20, 2012: Faculty, Advanced Consumer Bankruptcy Practice Institute, Phoenix, Arizona. This program uses materials created by the program's founders, Bankruptcy Judge Keith Lundin and Attorney Hank Hildebrand. I have no notes, transcript or recording. The sponsoring organization was the State Bar of Arizona; its address is 4201 N. 24th Street, Suite 100, Phoenix, AZ 85016.

December 15, 2011: Presenter, *Allonges? We Don't Need No Stinking Allonges! Evidence Issues Related to Challenges to Standing*, Mississippi Bankruptcy Conference. Handout supplied.

December 2, 2011: Panelist, *Business Track. Real Estate Appellate Argument: Debtor and Secured Creditor Lawyers Sparring over Several Timely Issues Arising in Real Estate Cases*, American Bankruptcy Institute, Winter Leadership Conference, Palm Springs, California. I have no notes, transcript or recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

November 17-18, 2011: Actor/panelist, *BICR Players Present: Dealing With Typical Ethical Problems*, State Bar of Wisconsin 2011 Annual Bankruptcy Update, Milwaukee, Wisconsin (November 17) and Madison, Wisconsin

(November 18). The panel discussed counsel's obligation to review schedules, conflicts in representing married debtors or other related debtors, employee conflicts and confidentiality, and counseling debtors regarding when to file for bankruptcy. I have no notes, transcript or recording. The address for the State Bar of Wisconsin is 5302 Eastpark Boulevard, Madison, WI 53718.

November 17, 2011: Moderator, *Means Testing After Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), State Bar Bankruptcy Update, State Bar of Wisconsin, Milwaukee, Wisconsin. Handout supplied.

September 12, 2011: Presenter, *Common Evidentiary Issues in Bankruptcy*, Federal Judicial Center, Phase II Orientation for Newly Appointed Bankruptcy Judges, Washington, D.C. Handout supplied.

June 10, 2011: Panelist, *Burn the House Down! Mortgage Issues in Consumer Cases*, American Bankruptcy Institute, Annual Central States Bankruptcy Workshop, Traverse City, Michigan. Handout supplied.

June 4, 2011: Presenter, *Evidence Update*, Eighth Circuit Bankruptcy Judges' Conference, Omaha, Nebraska. Handout supplied.

May 12, 2011: Presenter, *But I Need to Get It In, Judge! Evidence for the Bankruptcy Lawyer*, Columbus Bar Association, Bankruptcy Law Institute, Columbus, Ohio. Outline, fact pattern and scripts supplied.

April 7, 2011: Panelist, *Making Sense of the Mortgage Morass*, Eastern District of Wisconsin Bar Association, Annual Meeting – Bankruptcy Breakout, Milwaukee, Wisconsin. The panel discussed various issues arising in bankruptcy courts as a result of the mortgage crisis, including determining who has standing to bring mortgage-related actions in bankruptcy court, the appropriate methods for stripping liens, and the proof necessary to bring a motion for relief from stay or to object to confirmation. I have no notes, transcript or recording. The address of the Eastern District of Wisconsin Bar Association is 424 East Wells Street, Milwaukee, WI 53202.

March 22, 2011: Co-facilitator with Hon. Raymond Lyons, *Small Group Discussions*, Federal Judicial Center, National Workshop for Bankruptcy Judges I, Charlotte, North Carolina. I do not recall the topic of discussion. Our job was to facilitate interaction among the judges in the group. I have no notes, transcript or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, D.C. 20002.

March 3, 2011: Panelist, *Wisconsin Case Law Update – Cases Important to our Judiciary*, Bankruptcy Insolvency and Creditor's Rights Section of the State Bar of Wisconsin, Annual Retreat, Kohler, Wisconsin. Handout supplied.

February 11, 2011: Panelist, *Winning by Default: It's Not as Easy As It Sounds!*, Roundtable with Bankruptcy Judges from the Eastern District of Wisconsin, Milwaukee Bar Association CLE, Milwaukee, Wisconsin. Handout supplied.

January 31, 2011: Panelist, *First 20 Days' Criminal Vignette*, Thomas Fairchild Inns of Court, Milwaukee, Wisconsin. Handout supplied.

December 9, 2010: Presenter, *But I Need to Get It In, Judge! Evidence for the Bankruptcy Lawyer*, Mississippi Bankruptcy Conference. Handout supplied.

October 14, 2010: Facilitator, *Talking Points for Schwartz Roundtable – Mighty Mortgage Messes!*, National Conference of Bankruptcy Judges, Annual Meeting, New Orleans, Louisiana. Handout supplied.

October 14, 2010: Facilitator, *Talking Points for Schwartz Roundtable – A Discussion of the Impact of the Supreme Court's Decision in United Student Aid Funds v. Espinosa on Plan Confirmation Procedures*, National Conference of Bankruptcy Judges, Annual Meeting, New Orleans, Louisiana. Handout supplied.

October 4, 2010: Commentator, webinar on the five-year anniversary of the Bankruptcy Abuse Prevention and Consumer Protection Act, American Bankruptcy Institute, Milwaukee, Wisconsin. I have no notes, transcript or recording, but press coverage supplied. The address of the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

July 28, 2010: Panelist, *Specific Evidentiary Issues in Bankruptcy Proceedings: Mortgages, Mergers and Mansions*, Federal Judicial Center, National Workshop for Bankruptcy Judges II, Washington, D.C. Handout supplied.

June 14, 2010: Presenter, *Common Evidentiary Issues in Bankruptcy*, Federal Judicial center, Phase II Orientation for Newly Appointed Bankruptcy Judges, Washington, D.C. Handout supplied.

May 13, 2010: Panelist, *Judge's Panel*, Bankruptcy Association of Southern Illinois, General Bankruptcy Seminar, O'Fallon, Illinois. I have no notes, transcript or recording. The address for the Bankruptcy Association of Southern Illinois is 216 Main Street, Edwardsville, IL 62025.

May 1, 2010: Moderator: *Consumer Bankruptcy – I'd Like You More if You Didn't Drive Me Crazy: Recurring Issues among Consumer Lawyers and Trustees, and How to Avoid Them*, American Bankruptcy Institute Annual Spring Meeting, Washington, D.C. The panel discussed how to improve relationships between debtors' counsel and trustees. I have no notes, transcript or recording.

The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

April 30, 2010: Debater/Panelist, *Great Debates – In Calculating a Debtor's Projected Disposable Income, the Court May Consider the Debtor's Prospective Income or Expenses*, American Bankruptcy Institute Annual Spring Meeting, Washington, D.C. A fellow bankruptcy judge and I debated whether, in the wake of the Bankruptcy Abuse Prevention and Consumer Protection Act and subsequent court decisions interpreting that statute, a Chapter 13 debtor's disposable income ought to be calculated solely by looking at the income and expenses she reported for the six months prior to filing for bankruptcy, or whether a court ought also to look at her income and expenses as of the filing date and going forward. I have no notes, transcript or recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

April 29, 2010: Panelist, *Buying and Selling Companies in Bankruptcy: Views from the Bench, Bar and the Financial Advisory Committee*, Eastern District of Wisconsin Bar Association Annual Meeting, Milwaukee, Wisconsin. I moderated a panel that used a hypothetical Chapter 11 case involving a bicycle manufacturer to discuss best practices for selling companies in bankruptcy. I have no notes, transcript or recording. The address for the Eastern District of Wisconsin Bar Association is 424 East Wells Street, Milwaukee, WI 53202.

March 25, 2010: Panelist, *Mortgages, Mergers and Mansions: Specific Evidentiary Issues in Bankruptcy Proceedings*, Federal Judicial Center, National Workshop for Bankruptcy Judges I, Miami, Florida. Handout supplied.

March 4, 2010: Panelist, *Wisconsin Case Law Update – Cases Important to our Judiciary*, Bankruptcy Insolvency and Creditor's Rights Section of the State Bar of Wisconsin, Annual BICR Retreat, Kohler, Wisconsin. Handout supplied.

January 6, 2010: Presenter, *But All the Other Judges Do It! Successful Litigation in a Multi-Judge District*, Western District of Wisconsin Bankruptcy Bar Association, Madison, Wisconsin. Handout supplied.

October 21, 2009: Facilitator, *Talking Points for Schwartz Roundtable – Discussion on Imposing Sanctions on Attorneys*, National Conference of Bankruptcy Judges, Annual Meeting, Las Vegas, Nevada. Handout supplied.

July 9, 2009: Presenter, *Practical Application of the Rules of Evidence in the Context of a Bankruptcy Proceeding: "But Judge – I Need to Get It In!"* Federal Judicial Center Conference, Workshop for Bankruptcy Judges, Chicago, Illinois. Handout supplied.

June 13, 2009: Co-facilitator, *Breakfast with a Judge*, Annual Central States Bankruptcy Workshop, Traverse City, Michigan. I do not recall the topic of discussion at that year's breakfast. My job was to facilitate discussion among the lawyers. I have no notes, transcript or recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

June 13, 2009: Debater/presenter, *Resolved: The Means Test Controls the Dividend to Unsecured Creditors in a Chapter 13 Bankruptcy Case*, American Bankruptcy Institute, Annual Central States Bankruptcy Workshop, Traverse City, Michigan. A fellow judge and I debated the question of whether BAPCPA and the resulting case law required courts to calculate disposable income based solely on the debtor's income and expenses for the six months prior to filing, or whether courts ought to look at the debtor's current and future income and expenses. I have no notes, transcript or recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

March 5, 2009: Panelist, *Wisconsin Case Law Update – Cases Important to our Judiciary*, Bankruptcy Insolvency and Creditor's Rights Section of the State Bar of Wisconsin, Annual Retreat, Kohler, Wisconsin. Handout supplied.

June 25, 2008: Speaker, *The Optimal Roles of Chapter 128 and Chapter 11: Has an Appropriate Balance Been Attained?*, Milwaukee Bar Association CLE, Milwaukee, Wisconsin. I moderated a panel which compared the similarities and differences between Wisconsin's receivership statute (Chapter 128) and Chapter 11 of the Bankruptcy Code. The panelists debated whether one procedure was ultimately a better tool for selling or reorganizing companies than the other. I have no notes, transcript or recording. The address for the Milwaukee Bar Association is 424 East Wells Street, Milwaukee, WI 53202.

June 13, 2008: Debater/Presenter: *Resolved: Official Form 22C Conclusively Determines "Projected Disposable Income" for Chapter 13 Debtors with Above-Median Income*, American Bankruptcy Central States ABI Central States, Traverse City, Michigan. A fellow judge and I debated, prior to the Supreme Court's decision in *Hamilton v. Lanning*, whether bankruptcy courts must calculate the debtor's disposable income based solely on the income and expenses from the six months prior to the petition date, or whether courts also should look at current and expected income and expenses. I have no notes, transcript or recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

April 25, 2008: Panelist, *Judge's Panel*, Bankruptcy Association of Southern Illinois, General Bankruptcy Seminar, Fairview Heights, Illinois. I do not recall the topics discussed. I have no notes, transcript or recording. The address of the Bankruptcy Association of Southern Illinois is 216 North Main Street, Edwardsville, IL 62025.

March 6, 2008: Panelist, *Wisconsin Case Law Update – Cases Important to our Judiciary*, Bankruptcy Insolvency and Creditor's Rights Section of the State Bar of Wisconsin, Annual Retreat, Kohler, Wisconsin. Handout supplied.

October 26, 2007: *Evidence Law*, State Bar of Wisconsin 2007 Annual Bankruptcy Update, Milwaukee, Wisconsin. DVD supplied.

September 18, 2007: Co-facilitator with Hon. Joel Rosenthal, *Handling Midsize Chapter 11 Issues – small group discussion*, Federal Judicial Center, National Workshop for Bankruptcy Judges 2007, Austin, Texas. I have no notes, transcript or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, D.C. 20002.

June 16, 2007: Debater/Panelist, *Great Debate – The Means Test Determines the Proper Deductions for Income Under the Totality of Circumstances Test Under 707*, American Bankruptcy Institute, Annual Central States Bankruptcy Workshop, Traverse City, Michigan. I have no notes, transcript or recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

June 14, 2007: Panelist, *Disposable Income and the Means Test: What Do They Mean?*, American Bankruptcy Institute, Annual Central States Bankruptcy Workshop, Traverse City, Michigan. I have no notes, transcript or recording. The address for the American Bankruptcy Institute is 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314.

June 1, 2007: Panelist, *Judge's Panel*, Bankruptcy Association of Southern Illinois, General Bankruptcy Seminar, Fairview Heights, Illinois. I have no notes, transcript or recording. The address of the Bankruptcy Association of Southern Illinois is 216 North Main Street, Edwardsville, IL 62025.

May 4, 2007: Speaker, *But I Need to Get This In, Judge! Evidence for Bankruptcy Lawyers*, Milwaukee Bar Association bankruptcy seminar, Milwaukee, Wisconsin. Handout supplied.

February 10, 2007: Judge, State Bar of Wisconsin High School Mock Trial competition, Milwaukee, Wisconsin. I have no notes, transcript or recording. The address of the State Bar of Wisconsin is 5302 Eastpark Boulevard, Madison, WI 53718.

November 6, 2006: Speaker, *The New Bankruptcy Laws One Year Later*, Eastern District of Wisconsin Bar Association, Bench-Bar luncheon, Milwaukee, Wisconsin. I have no notes, transcript or recording. The address for the Eastern

District of Wisconsin Bar Association is 424 East Wells Street, Milwaukee, WI 53202.

October 26, 2006: Speaker, WILMIC Fall Showcase Seminar 2006, Green Bay, Wisconsin. I discussed assorted law practice management topics. I have no notes, transcripts or recording. The address for WILMIC (Wisconsin Lawyers Mutual Insurance Company) is 725 Heartland Trail, Suite 300, Madison, WI 53717.

May 10, 2006: Speaker, *Tips for Dealing with Recent BAPCPA Issues*, Milwaukee Bar Association bankruptcy seminar, Milwaukee, Wisconsin. Handout supplied.

February 11, 2006: Judge, State Bar of Wisconsin High School Mock Trial competition, Milwaukee, Wisconsin. I have no notes, transcript or recording. The address of the State Bar of Wisconsin is 5302 Eastpark Boulevard, Madison, WI 53718.

September 22, 2005: Speaker, *Ethics: The Newest Rules*, State of Wisconsin Office of the State Public Defender 2005 Annual Conference, Milwaukee, Wisconsin. I have no notes, transcript or recording. The address for the Office of the Public Defender is 315 North Henry Street, 2nd Floor, Madison, WI 53703.

October 4-5, 2001: Speaker, State of Wisconsin Office of the Public Defender 2001 Annual Conference, Milwaukee, Wisconsin. I discovered this event through searching the Internet and have included it here in an abundance of caution although I have no recollection of this event or what I might have discussed. I have no notes, transcript or recording. The address of the Office of the Public Defender is 415 Henry Street, 2nd Floor, Madison, WI 53703.

May 21, 2001: Panelist, discussion among lawyers and judges regarding pet peeves, Seventh Circuit Bar Association Annual Meeting and Judicial Conference, Indianapolis, Indiana. I have no notes, transcript or recording, but press coverage is supplied. The address of the Seventh Circuit Bar Association is 53 West Jackson Boulevard, Suite 1050, Chicago, IL 60604.

- c. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

For Federal Courts, Shutdown Caused Broad Disruptions, State News Service, October 25, 2013. Copy supplied.

Jane Pribek, *Clerk Competition Fierce in Wisconsin for Positions With Federal Judges*, Wis. Law Journal, August 20, 2013. Copy supplied.

I was one of three training judges recorded for *Mastering OSCAR*, the Administrative Office of the United States Courts, Washington, D.C., to be shown to judges to teach them how to post for new law clerk hires, March 7, 2013. Video supplied.

Bruce Vielmetti, *Ihlenfeldt Helped Shape Bankruptcy Practice*, Milwaukee Journal Sentinel, January 1, 2012. Copy supplied.

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Thomas J. Watson, *Should You Take On a Bankruptcy Case?*, Wis. Lawyer, July 2009. Copy supplied.

Jack Zemlicka, *Bankruptcy Filings Appear To Be Ascending Once Again*, Wis. Law Journal, August 13, 2007. Copy supplied.

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Tony Anderson, *Milwaukee Bar Association Hires New Executive Director*, Wis. Law Journal, November 16, 2005. Copy supplied.

Tony Anderson, *Chief Judge Concerned About Milwaukee County's Proposed Budget Cuts*, Wis. Law Journal, October 12, 2005. Copy supplied.

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Lawrence Sussman, *Officer to Take Anger Management; Tirade Ticket Would Be Cleared If He Stays Clean*, Milwaukee Journal Sentinel, December 5, 2003. Copy supplied.

Greg J. Borowski, *Henningsen Associate Hires Defense Attorney*, Milwaukee Journal Sentinel, January 22, 2003. Copy available at <http://tinyurl.com/lb5o4an>.

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Tony Anderson, *Green Bay Division of Eastern Dist. Of WI Court is Now in Session*, Wis. Law Journal, December 4, 2002. Copy supplied.

SOLO PRACTITIONER: *Active Bar Work Brings in Clients*, The National Law Journal, November 11, 2002. Copy supplied.

Panel Picks Four Contenders for Judge, Milwaukee Journal Sentinel, June 25, 2002. Copy supplied.

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One Legal Bill Remains a Mystery, Associated Press State and Local Wire, May 22, 2002. Copy supplied.

Doug Moe, *Is Capitol-Gate a Federal Case?*, Capital Times, February 5, 2002. Copy supplied.

Tom Kertscher, *FBI Interviews Dozens in Local Side of Investigation; Muslim Leaders in Milwaukee Question Tactics of Agents Checking Out 1,500 Attack-Related Calls*, Milwaukee Journal Sentinel, September 22, 2001. Copy supplied.

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Steve Warmbir, *Antiques Dealer Convicted in Beating Over Stolen Art*, Chicago Sun-Times, March 21, 2001. Copy supplied.

Tom Kertscher, *Chmura Takes Risk by Not Testifying; It Signals Defense Is Pleased With Case, Lawyers Say*, Milwaukee Journal Sentinel, February 3, 2001. Copy supplied.

Strang Named State's First Federal Defender, The Daily Reporter, July 20, 2000. Copy supplied.

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Gretchen Schuldt, *Trial Date Set for 15 Charged in Outlaws Case*, Milwaukee Journal Sentinel, November 23, 1999. Copy supplied.

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Accounts Conflict in Custody Death, Wis. State Journal, May 7, 1997. Copy supplied.

13. **Judicial Office:** state (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by the Seventh Circuit Court of Appeals as a United States bankruptcy judge for the Eastern District of Wisconsin in July 2005, and continue to serve in that position. My appointment originally included an obligation to hear cases in the Southern District of Illinois, which I did from my appointment date in 2005 until 2009.

Pursuant to a Standing Order of Reference issued on July 10, 1984 by the judges of the District Court for the Eastern District of Wisconsin, bankruptcy judges in the Eastern District of Wisconsin have authority to hear and decide "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11." Bankruptcy cases filed in the Eastern District of Wisconsin are randomly assigned to one of the four bankruptcy judges. Bankruptcy judges also make findings of fact and conclusions of law for submission to the district court in certain instances.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

In my nine years as a bankruptcy judge, I have presided over approximately thirty adversary proceeding trials that have gone to verdict. I also have entered judgment in approximately fifteen summary judgment proceedings and have entered over fifty default judgments. I have prepared findings of fact and conclusions of law for the district court's consideration on approximately two occasions.

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

Williams v. City of Milwaukee, et al. (In re Williams), 473 B.R. 307 (Bankr. E.D. Wis. 2012).

Villalobos v. BAC Home Loans Serv'ing (In re Villalobos), No. 11-2102, 2012

WL 1865421 (Bankr. E.D. Wis. March 23, 2012).

Starfire, Inc. v. Dolata (In re Dolata), No. 09-2056, 2010 WL 3860481 (Bankr. E.D. Wis. Oct. 1, 2010).

Levine v. Ward (In re Ward), 425 B.R. 507 (Bankr. E.D. Wis. 2010).

Ganther Constr., Inc. v. Ward (In re Ward), 417 B.R. 582 (Bankr. E.D. Wis. 2009).

In re Whitwell, No. 08-32896, 2009 WL 2371561 (Bankr. S.D. Ill. July 30, 2009).

In re Boring, No. 05-34260, 2009 WL 1228788 (Bankr. S.D. Ill. May 1, 2009).

In re Delp, No. 08-31466, 2009 WL 322227 (Bankr. S.D. Ill. Feb. 9, 2009).

Seaback v. Barth (In re Barth), No. 08-2062, 2008 WL 5170558 (Bankr. E.D. Wis. Nov. 7, 2008).

In re Smith, 401 B.R. 343 (Bankr. S.D. Ill. 2008).

In re Van Bodegom Smith, 383 B.R. 441 (Bankr. E.D. Wis. 2008).

In re McCallister, No. 07-32127, 2008 WL 515508 (Bankr. S.D. Ill. Feb. 22, 2008).

In re Action Transit, Inc., No. 07-27904, 2008 WL 533992 (Bankr. E.D. Wis. Jan. 10, 2008).

In re Kiedrowski, No. 06-24318, 2007 WL 6371259 (Bankr. E.D. Wis. Aug. 9, 2007).

In re Smith, No. 06-20127, 2007 WL 1544366 (Bankr. E.D. Wis. May 29, 2007).

In re Simkins, Nos. 05-36933 and 04-33851, 2007 WL 956511 (Bankr. S.D. Ill. March 28, 2007).

In re Sawdy, 362 B.R. 898 (Bankr. E.D. Wis. 2007).

Giesecking v. Thomas, 358 B.R. 754 (Bankr. S.D. Ill. 2007).

In re Spears, 355 B.R. 116 (Bankr. E.D. Wis. 2006).

In re Balcerowski, 353 B.R. 581 (Bankr. E.D. Wis. 2006).

In re Richie, 353 B.R. 569 (Bankr. E.D. Wis. 2006).

In re French, 353 B.R. 258 (Bankr. E.D. Wis. 2006).

In re Fuller, 346 B.R. 472 (Bankr. S.D. Ill. 2006).

- c. For each of the ten most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

The cases appear below in reverse chronological order.

1. *Maxwell v. Stanislawski*, (*In re Stanislawski*), Adv. no. 13-2152, Bankr. no. 12-36752-pp (Bankr. E.D. Wis. Jan. 6, 2014), *appeal pending*, no. 14-CV-186-LA (E.D. Wis.) (Adelman, J.).

The trustee filed a complaint, asking the court to deny the debtor's discharge because she either had failed to disclose assets, or had deliberately misrepresented the value of those assets. In particular, the debtor had reported owning a ring, which she valued at \$500. The trustee learned that the ring had been appraised, and insured, for over \$18,000. The debtor did not turn over the ring to the trustee, despite being asked to do so. At trial, the debtor (representing herself) testified that the day after the trustee had demanded turnover of the ring, her car had been seized in a traffic stop, and the ring had been in it. I found in favor of the plaintiff/trustee. The debtor has filed a motion to reconsider, which is pending, and a notice of appeal.

Counsel for Plaintiff:

Michael F. Dubis
208 East Main Street
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(262) 534-6950

The defendant appeared *pro se*.

2. *Puma v. Bank Mutual* (*In re Puma*), Adv. no. 13-2398, Bankr. no. 12-37506-pp (Bankr. E.D. Wis. Nov. 18, 2013).

The debtors/plaintiffs filed this suit against the bank that held the mortgage on their rental property. They sought to "cram down" the bank's claim, from approximately \$61,000 to \$25,000. They sought to reduce the bank's claim in order to make it possible for them to retain the rental property through a

Chapter 13 plan of reorganization. At trial, each party produced a witness to testify to the value of the property. The debtors/plaintiffs' witness testified that the property had only one habitable unit in it, and this was why he had valued it at only \$25,000. He testified that the part of the building that might be considered a second unit was at garden level, and thus that no one would want to rent it, and that no investor would want to buy it. The bank's appraiser, however, had viewed the property more recently, and there were, in fact, two different tenants living in two separate units in the property. He had valued the property at \$61,000 because of the fact that it was a two-unit – it had two separate entrances, separate appliances, separate utilities. He indicated that the second unit was habitable, because there were people living in it, and it was in good condition. At the end of the trial, based on the evidence from both witnesses, I valued the property at \$58,000, and gave the debtors/plaintiffs an opportunity to amend their Chapter 13 plan to reflect that value.

Counsel for Plaintiffs:

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Counsel for Defendant:

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3. *State of Wisconsin v. Burse (In re Burse)*, Adv. no. 12-2303, Bankr. no. 11-37393-pp (Bankr. E.D. Wis. Sept. 5, 2013).

The complaint alleged that debtor/defendant Burse had incurred debt to the State of Wisconsin by fraud and false pretenses, in violation of 11 U.S.C. § 523(a)(2). Specifically, the complaint alleged that the defendant had deliberately provided false information in support of his application to be considered a disadvantaged economic enterprise, and had submitted false billing and invoice statements to collect more funds in those instances in which he obtained contracts as part of that program. The plaintiff alleged that the defendant had falsified transcripts and proof of his degree, in order to qualify to obtain contracts as a disadvantaged economic enterprise. During the trial, the defendant stated that he had, in fact, falsified his transcripts, as

well as alleged letters from university personnel and graduation documents. He argued that this fact was not important, and that he didn't get any contracts because of these false representations. He also argued that the multiple duplicate and excessive invoices were errors. I found against the defendant, granted judgment in favor of the plaintiff, and found the debt nondischargeable.

The plaintiff appeared *pro se*.

Counsel for Defendant:

Mark Bromley
Assistant Attorney General
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4. *First National Bank of Omaha v. Berglund (In re Berglund)*, Adv. no. 12-2689, Bankr. no. 12-29036-pp (Bankr. E.D. Wis. May 30, 2013).

The complaint alleged that the debtors/defendants had made charges on their bank credit card within 90 days of the date they had filed for bankruptcy, knowing that they would not repay those debts. The complaint also alleged that the debtors had purchased "luxury goods" within that period. Accordingly, the complaint alleged that these debts were nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(C). I dismissed the § 523(a)(2)(A) (fraud) count on partial summary judgment, and the parties had agreed to dismissal of another cause of action. At trial, therefore, the only remaining cause of action was the allegation that the debtors/defendants had incurred the charges with fraudulent intent. I ruled in favor of the debtors/defendants, and dismissed the complaint.

Counsel for Plaintiff:

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(402) 554-4400

Counsel for Defendants:

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Geraci Law, LLC

55 East Monroe Street, Suite 3400
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(312) 332-1800

5. *Luedtke v. Temple (In re Temple)*, Adv. no. 12-2690, Bankr. no. 12-29025-pp (Bankr. E.D. Wis. May 16, 2013).

The plaintiff objected to the bankruptcy court discharging the debt owed to her by the debtor/defendant. Because she was not represented by counsel, she did not state a specific cause of action. She alleged, however that the debtor had deliberately been untruthful with her, telling her that he planned to repay the debt when he had no intention of doing so. After hearing the plaintiff's case, I concluded that she was attempting to allege a cause of action under 11 U.S.C. § 523(a)(6), objecting to the discharge of a particular debt as having been incurred through willful and malicious injury. I concluded that the plaintiff had not met her burden of proof, issued judgment in favor of the defendant, and dismissed the complaint.

The plaintiff appeared *pro se*.

Counsel for Defendant:

Eugene N. Johnson
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1425 Summit Avenue, Suite 100
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6. *Mann, Trustee v. Dunn and Prudential Life Insurance (In re Dunn)*, Adv. no. 12-2639, Bankr. no. 12-28183-pp (Bankr. E.D. Wis. Feb. 7, 2013).

The plaintiff/trustee sought to deny the debtor/defendant's discharge for making false oaths, concealing assets and concealing records. At the conclusion of the evidence, I found that the plaintiff/trustee had failed to carry the burden of proof, and that there was not sufficient evidence to demonstrate that the debtor/defendant had made false oaths, knowingly concealed assets, or knowingly concealed records. I found in favor of the defendant/debtor, and dismissed the complaint.

Counsel for Plaintiff:

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Counsel for Defendant:

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Trustee:

Douglas F. Mann
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7. *Starfire, Inc. v. Dolata (In re Dolata)*, Adv. No. 09-2056, Bankr. no. 08-32866, 2010 WL 3860481 (Bankr. E.D. Wis. Oct. 1, 2010).

This was another trial involving allegations that the debtor/defendant had violated Wisconsin's theft-by-contractor law (fraud and defalcation under the Bankruptcy Code). The defendant responded to the allegations by arguing that he applied the amount of money the owners had given him proportionally to all material men and suppliers. After a trial and post-trial briefing, I found in favor of the plaintiff and found the defendant's debt nondischargeable.

Counsel for Plaintiff:

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Fox, O'Neill & Shannon
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Counsel for Defendant:

Richard B. Jacobson
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8. *Levine v. Ward (In re Ward)*, 425 B.R. 507 (Bankr. E.D. Wis. 2010).

The plaintiffs were homeowners who had retained the debtor/defendant to perform some remodeling on their home. The complaint alleged that the defendant had violated Wisconsin's theft-by-contractor statute by taking the money the owners had provided for materials and labor and using it for purposes other than paying for the materials and labor (fraud and defalcation under the Bankruptcy Code). At the end of the trial, I found in favor of the plaintiffs.

Counsel for Plaintiffs:

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Counsel for Defendant:

Robert K. Steuer
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(414) 220-4280

9. *Ganther Construction, Inc. v. Ward (In re Ward)*, 417 B.R. 582 (Bankr. E.D. Wis. 2009).

The plaintiff sued the debtor/defendant for violations of Wisconsin's theft-by-contractor statute (fraud and defalcation under the Bankruptcy Code). The plaintiff alleged that the defendant had taken funds from the owner of a retirement community development, and that rather than holding those funds in trust for the benefit of the suppliers and labor contractors, he had diverted them to other uses. The plaintiff alleged that as a result, while it had performed the job it had contracted to perform, it had not been paid in full for its work. At the end of the trial, I found that the plaintiff had failed to prove its burden of proof as to all the elements of the cause of action, and found in favor of the debtor/defendant.

Counsel for Plaintiff:

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Counsel for Defendants:

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10. *Giesecking v. Thomas (In re Thomas)*, 358 B.R. 754 (Bankr. S.D. Ill. 2007).

The plaintiff objected to both the dischargeability of the particular debt and the debtor/husband's discharge. The case involved a series of business loans gone awry, and the plaintiff alleged that the defendant had incurred the debts through false statements, misrepresentation, and fraud. I tried the case while sitting in the Southern District of Illinois. At the conclusion of a lengthy trial, I issued judgment against the plaintiff and in favor of the defendant.

Counsel for Plaintiff:

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Counsel for Defendant:

Thomas J. Lester
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- d. For each of the ten most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

The cases appear below in reverse chronological order.

1. *In re Jackson*, No. 12-25456 (Bankr. E.D. Wis. June 20, 2012). Order imposing sanctions supplied.

Counsel for Debtor:

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Attorney Booker appeared *pro se*.

Counsel for United States Trustee:

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Counsel for Standing Chapter 13 Trustee:

Rebecca A. Quiroz
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2. *Williams v. City of Milwaukee, et al. (In re Williams)*, 473 B.R. 307 (Bankr. E.D. Wis. 2012).

Counsel for Plaintiff:

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Counsel for the City of Milwaukee:

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3. *Starfire, Inc. v. Dolata (In re Dolata)*, No. 09-2056, 2010 WL 3860481 (Bankr. E.D. Wis. Oct. 1, 2010).

Counsel for Plaintiff:

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Counsel for Defendant:

Richard B. Jacobson
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4. *Badger Die Casting Corp., et al. v. Lubben (In re Lubben)*, No. 08-2273 (Bankr. E.D. Wis., Sept. 17, 2010) Order granting defendant's motion to alter judgment and granting defendant's amended motion for sanctions supplied.

Counsel for Plaintiff:

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Counsel for Defendant:

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5. *Ganther Constr., Inc. v. Ward (In re Ward)*, 417 B.R. 582 (Bankr. E.D. Wis. 2009).

Counsel for Plaintiff:

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6. *In re Van Bodegom Smith*, 383 B.R. 441 (Bankr. E.D. Wis. 2008).

Counsel for Debtors:

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7. *In re Smith*, No. 06-20127, 2007 WL 1544366 (Bankr. E.D. Wis. May 29, 2007).

Counsel for Debtor:

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Counsel for Nissan Motor Acceptance:

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8. *In re Fuller*, 346 B.R. 472 (Bankr. S.D. Ill. 2006).

Counsel for the Standing Chapter 13 Trustee:

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Counsel for Debtor:

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9. *In re French*, 354 B.R. 258 (Bankr. E.D. Wis. 2006).

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Counsel for Debtor:

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10. *In re Balcerowski*, 353 B.R. 581 (Bankr. E.D. Wis. 2006).

Standing Chapter 13 Trustee:

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e. Provide a list of all cases in which certiorari was requested or granted.

To the best of my knowledge, there are no cases that I have been involved with as a judge in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Fair v. GMAC Mortgage, LLC (In re Fair), Bankr. no. 10-27094-pp, Adv. no. 10-2362 (Bankr. E.D. Wis. Oct. 25, 2010), No. 10-CV-1128-RTR, 450 B.R. 853 (E.D. Wis. 2011) (Randa, J.).

The debtor filed suit against the creditor that held the second mortgage on her

home. She argued that she owed more on her first mortgage than the property was worth, and thus that the second mortgage was wholly unsecured and should be treated as a general, unsecured, non-priority claim. Prior to filing the Chapter 13 bankruptcy case which gave rise to this lawsuit, the debtor had received a discharge of her personal debt in a prior Chapter 7 case. The mortgage creditor argued that the debtor should not be able to use a Chapter 13 case solely for the purpose of avoiding a second mortgage that she could not have avoided in the previous Chapter 7 case. I agreed, and held in favor of the defendant mortgage creditor. Judge Randa reversed that decision, finding that the Bankruptcy Code did not prohibit a debtor from avoiding an unsecured second mortgage in a Chapter 13 after having her personal debt discharged in a Chapter 7, unless there was some evidence that she had filed the Chapter 13 in bad faith (perhaps solely for the purpose of avoiding the lien, with no other debt to discharge). He remanded the case to me to make a finding as to whether the debtor had filed the Chapter 13 case in bad faith. On remand, I found that the debtors had incurred new debt since receiving their Chapter 7 discharge, and that in the Chapter 13 case, they sought not only to strip the second mortgage, but also to pay down or discharge that new debt. Accordingly, I found that the debtors had not filed the Chapter 13 case in bad faith, and thus allowed them to strip the second mortgage.

Grossman v. Sawdy (In re Sawdy), 362 B.R. 898 (Bankr. E.D. Wis. 2007), No. 07-CV-312, 384 B.R. 199 (E.D. Wis., 2008) (Stadtmueller, J.).

The debtors filed this Chapter 13 case 11 months after the Bankruptcy Abuse Protection and Consumer Protection Act amendments to the Bankruptcy Code went into effect, as bankruptcy courts were trying to understand and apply the new means test and the new terminology. The debtors in this Chapter 13 case proposed to deduct from their "projected disposable income" calculations amounts due on car payments. The debtors, however, owned their car free and clear, and were not making payments. The Chapter 13 trustee objected to the deductions, arguing that the debtors should not be able to deduct payments they were not making. Based on my reading of the statutory language, I overruled the objection. The trustee appealed, and Judge Stadtmueller reversed. Due to the reversal, I sustained the trustee's objection, and ordered the debtors to file a new plan which was not based on deduction of the car payments.

Superior Stainless & Erecting, Inc., et al. v. Kinnee (In re Kinnee), Bankr. No. 06-21356-pp, Adv. No. 06-02308-pp (Pepper, J.), No. 08-CV-00308 (E.D. Wis., March 31, 2009) (Clevett, J.).

I sanctioned the debtors for failure to turn over discovery, despite persistent demands by opposing counsel and despite my having set multiple deadlines for the debtors to produce the documents. The sanction I imposed was a severe one – I dismissed the case. The debtors appealed, and the case was assigned to Judge

Clevert. He reversed, noting that dismissal was a severe sanction for failure to comply with discovery demands, and that I had not made the necessary findings. Judge Clevert remanded the case. Upon remand, the parties briefed several issues (including a waiver issue). I ordered the plaintiffs to cease garnishing the debtors' wages in order to pay the judgment. After reviewing the parties' briefs, I vacated my prior order granting the plaintiffs' motion for default judgment on the motion for sanctions. I returned the case to the trial calendar. The plaintiff eventually filed an unopposed motion to dismiss the suit, which I granted.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a United States bankruptcy judge, all of my decisions are filed on the United States Bankruptcy Court for the Eastern District of Wisconsin's Electronic Case Filing System (CM/ECF). A large number of my decisions are on routine matters, such as rulings on motions and objections, uncontested confirmation hearings, rulings on fee applications for professionals, and other similar pleadings. It is virtually impossible to estimate the number of such decisions. While those decisions often are not published in reporters or in Westlaw or Lexis, they are accessible on the CM/ECF system.

Some of my decisions appear on the website for the U.S. Bankruptcy Court for the Eastern District of Wisconsin. The decisions that appear on the website are decisions which I have chosen to highlight. Only a fraction of my decisions are posted on the website, due both to time constraints and to the fact that many of the decisions a bankruptcy court renders do not involve novel issues. The address for that site, and for the location of my decisions on the site, is <http://www.wieb.uscourts.gov/opinions/opinions/search1/page1>.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have not had any significant opinions on federal or state constitutional issues.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general

description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I follow the Code of Conduct for United States Judges whenever considering a possible recusal issue. Both the Eastern District of Wisconsin and Southern District of Illinois bankruptcy courts have conflict checking systems. It is up to each judge to provide that system with the names of individuals or entities which might present conflicts of interest. Each system provides notification messages (via e-mail) to judges when an identified individual or entity appears in a case assigned to that judge. The judge is not recused without his or her knowledge; it remains the responsibility of the judge, once identified of the case and the individual or entity, to make a decision regarding the need to recuse.

I have, on a few occasions, recused myself *sua sponte* from a bankruptcy case because the debtor was a former client, or the family member of a former client, from my days in private practice. I do not recall the names of these clients, and do not keep records of these recusals. These were not cases identified by the court conflict-checking system. I recognized the names of the individuals from a review of the docket. On one occasion, I recused myself because a member of my staff personally knew a party. On all but one occasion, I used our court's informal recusal procedure – I sent an e-mail to the clerk of court, identifying the case name and number, and asking that the case be reassigned to another judge on the court. On the one occasion, I did not realize that the debtor was a former client until he appeared before me at a hearing. At that hearing, I informed the debtor that I could not preside over his case and would not be deciding the issue before me. I then sent an e-mail to the clerk, asking that the case be reassigned to another judge.

In the above cases, I did not consult with the parties prior to recusing myself. I make the decision myself regarding whether to recuse; I do not think it appropriate to ask the parties whether they believe that I can be fair or whether they believe that I ought to recuse myself.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office other than my present judicial office. I have never had an unsuccessful candidacy for elective office or unsuccessful nomination for public office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have participated in the following campaigns: Russell Feingold for U.S. Senate (2004; I participated in fundraising and allowed my name to be used in campaign materials); Matthew Flynn for U.S. House of Representatives (2004; I allowed my name to be used in campaign materials); Peg Lautenschlager for Wisconsin Attorney General (2004; I co-hosted a fundraiser, participated in an advisory group on fundraising and voter outreach, and allowed my name to be used in campaign materials); Tom Barrett for Mayor of Milwaukee (2004; I allowed my name to be used in campaign materials); Tom Barrett for Governor of Wisconsin (2002; I allowed my name to be used in campaign materials); Brian Blanchard for Dane County District Attorney (2001; I participated in an advisory group on fundraising and voter outreach and allowed my name to be used in campaign materials); Daniel T. Flaherty for U.S. House of Representatives (2000; I co-hosted a fund-raiser and allowed my name to be used in campaign materials); Sheldon A. Wasserman for Wisconsin Assembly (between 1998 and 2004, I allowed my name to be used in campaign materials); and Pedro Colon for Wisconsin Assembly (1998; I allowed my name to be used in campaign materials and co-hosted a fundraiser. I also may have co-hosted a fundraiser several years later).

I also have supported a number of individuals who were seeking appointment or election to judgeships in non-partisan elections. For the Wisconsin Supreme Court, in 2004, I supported the re-election of Ann Walsh Bradley by allowing my name to be used in campaign materials. For the Wisconsin Court of Appeals, in 2004, I supported Joan Kessler by allowing my name to be used in campaign materials and signing a post-election fundraising letter. For the Milwaukee County Circuit Court, I participated in the following campaigns by writing letters of recommendation and allowing my name to be used in campaign materials:

Dennis Cimpl (spring 2005 appointment); James Brennan (sometime between 1995 and 2005, appointment). Jean DiMotto (2004 election); Glenn Yamahiro (2004 retention election, 2003 election); Mary E. Triggiano (2004 appointment); Joseph R. Wall (2000 – 2001 election); Ann T. Bowe (1988 – 1989 election); I also recall participating in phone banks for Ann Bowe. For the Mid-Monroe Municipal Court, in 2005, I allowed my name to be used in campaign materials supporting Janet Heins.

Finally, I twice participated in campaigns for Village Trustee in the Village of Shorewood, Wisconsin, a non-partisan position. In 2004, I supported Ellen Eckman for re-election by allowing my name to be used in campaign materials. In 2003, my ex-husband, Jeffrey William Hanewall, was a candidate, and I stuffed envelopes, appeared at fund-raisers, allowed my name and photograph to be used in campaign materials, and attended campaign events.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From August 1989 to July 1990, I served as a law clerk to the Honorable Judge Frank J. Johnson, Jr., Circuit Judge for the United States Court of Appeals for the Eleventh Circuit.

- ii. whether you practiced alone, and if so, the addresses and dates;

I practiced alone during two periods in my career in private practice:

November 1997 – October 1998.
Pamela Pepper, Attorney at Law, S.C.
3127 West Wisconsin Avenue
Milwaukee, Wisconsin 53208

2000 – 2005
Pamela Pepper, Attorney at Law, S.C.
731 North Jackson Street, Suite 800
Milwaukee, Wisconsin 53202

- iii. dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1990 – 1994

United States Attorney's Office for the Northern District of Illinois
United States Courthouse
219 South Dearborn, Suite 500
Chicago, Illinois 60604
Assistant United States Attorney

1994 – 1997

United States Attorney's Office for the Eastern District of Wisconsin
United States Courthouse
517 East Wisconsin Avenue, Room 530
Milwaukee, Wisconsin 53202
Assistant United States Attorney

April 1997 – September 1997

Law Office of Robin Shellow
324 West Vine Street
Milwaukee, Wisconsin 53212
Associate

November 1997 – October 1998

Pamela Pepper, Attorney at Law, S.C.
3127 West Wisconsin Avenue
Milwaukee, Wisconsin 53208

1998 – 2000

Cubbe & Pepper, Ltd.
735 North Water Street
Milwaukee, Wisconsin 53202
Partner

2000 – 2005

Pamela Pepper, Attorney at Law, S.C.
731 North Jackson Street, Suite 800
Milwaukee, Wisconsin 53202

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

During my studies to obtain a graduate certificate in dispute resolution at Marquette University (part time, 2001 to 2003), I mediated (free of charge) several small claims disputes submitted to the program. Because the program was conducted in conjunction with the Milwaukee County small claims court, the issues involved were usually personal or

consumer issues: a couple who'd broken off their engagement, and the man wanted the engagement ring back but the woman didn't want to return it; a woman who'd been fired from a small business, and had alleged discriminatory employment action because of her religion; a person who'd purchased a refrigerator from an appliance store, and alleged that it was defective.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1990 to 1997, I was a federal prosecutor in Chicago, then Milwaukee. I began in the general criminal division in Chicago, indicting and trying cases ranging from theft of mail and bank robbery to fraud and arson. I also wrote appellate briefs and argued them before the Seventh Circuit Court of Appeals. In the last year or so of my time in the Chicago office, I was assigned to the Organized Crime and Drug Enforcement Task Force ("OCDETF"), investigating and prosecuting gang-related offenses such as crimes under the Racketeer Influenced and Corrupt Organizations Act and continuing criminal enterprises. In the Milwaukee U.S. Attorney's Office, I worked exclusively in the Milwaukee OCDETF division, at the trial and appellate levels.

From 1997 through 2005, I worked in private practice as a criminal defense attorney. Whether working in the offices of another attorney, in a partnership with another lawyer, or as a solo practitioner, I acted as criminal defense counsel at the state and federal levels, both in trial court and in the courts of appeal. I accepted appointed cases from the Wisconsin State Public Defender and Federal Defender Services of Wisconsin, as well as representing private clients. Most of the appointed cases involved defendants accused of "street crimes" – drug offenses, theft, arson. The private cases ranged from some street crime to white-collar fraud, public corruption and collusion allegations.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my service in the United States Attorneys' Offices in Chicago and Milwaukee, I did not have individual clients. Various federal and local agencies provided criminal referrals to those offices, including the United States Postal Service; the Federal Bureau of Investigation; the Drug Enforcement Agency; the Bureau of Alcohol, Tobacco and Firearms; the Office of Inspector General of the Department of Housing

and Urban Development; and what then was the Immigration and Naturalization Service.

During my time in private practice, I accepted appointments both from the Federal Defender and the Wisconsin State Public Defender, primarily for clients who had been charged with "street" crimes. I also represented clients who retained me privately. My private clients included those charged with "street" crimes and those charged with white-collar offenses.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

The entirety of my practice was in litigation, and I appeared in court frequently.

- i. Indicate the percentage of your practice in:

- | | |
|----------------------------|-----|
| 1. federal courts: | 83% |
| 2. state courts of record: | 17% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 0% |
| 2. criminal proceedings: | 100% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Over the course of my career, I tried more than 40 cases to verdict. In those I tried as a prosecutor, I often was co-counsel with another Assistant U.S. Attorney (particularly in Chicago, where it was the office's policy at that time to "double-chair" all trials, so that less experienced lawyers could learn from more seasoned ones). The U.S. Attorney's offices did not have chief and associate counsel positions. In private practice, I was most often sole counsel at trial, although I had co-counsel in a few cases. There were cases, however, in which there were multiple defendants involved in the case. In those instances, while I was the only attorney representing my particular client, there were a number of attorneys on the defense side.

- i. What percentage of these trials were:

- | | |
|-------------|------|
| 1. jury: | 100% |
| 2. non-jury | 0% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I did not have the opportunity to practice before the United States Supreme Court.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Gral, et al.*, No. 05-CR-00013-CNC (E.D. Wisc. 2005) (Clevett, J.).

The United States Attorney's Office for the Eastern District of Wisconsin indicted several individuals with fraud and conspiracy to commit fraud in connection with a series of real estate developments. Along with co-counsel, I represented Mr. Gral, a partner in a large Milwaukee law firm. The indictment alleged that Mr. Gral had abused his fiduciary responsibilities to a client (a large home-building/development company) by using its funds to fund his own real estate development projects. The indictment charged Mr. Gral with fraud and breach of fiduciary duty. Mr. Gral retained me in 2004, along with co-counsel, several months prior to the issuance of the indictment, and I resigned my representation in June 2005, just before taking the bench. Most of my work took place before the government indicted Mr. Gral. Along with co-counsel, I reviewed voluminous records, interviewed witnesses, and conducted negotiations with the government. In November 2005, after I took the bench, Mr. Gral pled guilty. In August 2006, the court sentenced him to 24 months in the custody of the Bureau of Prisons, three years of supervised release, a \$50,000 fine, \$1,752,000 in restitution, and a \$100 special assessment.

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Co-counsel:

Nathan Fishbach (then counsel at the law firm of Whyte, Hirschboeck, Dudek, now deceased)

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Counsel for defendant Mann:

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2. *United States v. Maples, et al.*, No. 04-CR-0053-WCG (E.D. Wis. 2004) (Griesbach, J.).

The United States Attorney's Office for the Eastern District of Wisconsin charged Mr. Maples, his son (and business partner), Vinton Construction Company, and others with antitrust violations, including collusion. I represented Mr. Maples. Mr. Maples and his son owned a construction company that poured concrete for road and highway work, including bidding on such jobs for the State of Wisconsin. The indictment alleged that, along with his son, and their company, Vinton Construction, Mr. Maples colluded with others in the industry to fix bidding on road projects commissioned by the State of Wisconsin Department of Transportation. I represented Mr. Maples from the inception of the case at the end of 2003 until I joined the bankruptcy bench in 2005. I reviewed extensive discovery, conferred with co-counsel, filed motions and responded to the government's motions, interviewed witnesses, negotiated a plea agreement for Mr. Maples, and represented him at his plea hearing and at his sentencing. After the entry of the plea, the court sentenced Mr. Maples to four years of probation, a \$300,000 fine, \$50,000 in restitution, and a \$100 special assessment.

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Counsel for Vinton Construction Company:

Nathan Fishbach (deceased)

Counsel for defendant Streu Construction Company:

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Counsel for defendant J. Streu:

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Continental The Americas
1830 MacMillan Park
Fort Mill, SC 29707
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3. *United States v. Segal, et al.*, No. 02-CR-112-RC (N.D. Ill. 2003)
(Castillo, J.).

The United States Attorney's Office for the Northern District of Illinois charged Mr. Segal, his accountant D. Watkins, and Mr. Segal's corporate entity with numerous counts of insurance fraud, racketeering, and conspiracy. The government alleged that Mr. Segal had used his insurance brokerage firm to embezzle premiums, credits and other insurance trust funds and had converted the proceeds to his own use, as well as misrepresenting the amounts of premiums due to the customers in order to cover up that scheme. As a result of Mr. Segal's alleged ties to the Chicago political community, the case received attention in the media. I represented Mr. Watkins, the accountant for the brokerage firm and for Mr. Segal. Much of my representation took place before the U.S. Attorney's Office issued charges against Mr. Watkins. I reviewed the evidence, assisted Mr. Watkins in cooperating in the government's prosecution of Mr. Segal, and assisted Mr. Watkins in negotiating charges and negotiating a plea agreement. I represented Mr. Watkins at his plea hearing on March 23, 2004, where he pled guilty to insurance fraud. Due to my appointment to bankruptcy court, I had to withdraw before Mr. Watkins' sentencing. On December

13, 2005, after I took the bench, the court sentenced Mr. Watkins to two years' probation, a \$5,000 fine, and restitution of \$109,330.

Counsel for the United States:

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Ungaretti & Harris
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Chicago, IL 60602
(312) 977-4883

Counsel for co-defendant Segal:

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Jones Day
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(312) 782-3939

4. *United States v. Hewlett*, No. 03-CR-0023-CNC (E.D. Wis. 2003) (Clevett, J.).

The United States Attorney's Office for the Eastern District of Wisconsin charged the two defendants with a number of drug offenses. The indictment alleged that the defendants had run a cocaine operation which had begun in Racine, Wisconsin, and then had moved to Janesville, Wisconsin after drawing law enforcement attention in Racine. It alleged that the two defendants had utilized various individuals to sell cocaine for them at the retail level. In approximately January 1993, after his arrest, I was appointed by Federal Defender Services of Eastern Wisconsin to represent defendant Hewlett. There were extensive pre-trial proceedings, including review of substantial discovery and the filing of a motion to suppress. The trial lasted seven days, with a break of several days in the middle to resolve an evidentiary issue that arose during the trial. Between the time that the jury returned the guilty verdict and the date of Mr. Hewlett's sentencing, the Supreme Court decided *United States v. Booker*, 543 U.S. 220 (2005), striking down as unconstitutional the mandatory nature of the United States Sentencing Guidelines. Judge Clevett imposed one of the first, post-*Booker*, non-mandatory Guidelines sentences in the Eastern District. He sentenced Mr. Hewlett to 240 months in the custody of the Bureau of Prisons, ten years' supervised release, and a \$100 special assessment. I filed a notice of appeal on behalf of Mr. Hewlett on May 12, 2005. I did not represent Mr. Hewlett in the appeal to the Seventh Circuit, because I had been appointed to the bankruptcy court and could no longer practice law.

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Counsel for co-defendant Gary:

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5. *United States v. Harris*, No. 00-CR-50-RTR (E.D. Wis. 2000) (Randa, J.).

The United States Attorney's Office for the Eastern District of Wisconsin charged the defendant with bank robbery. I was appointed by the Federal Defender Services of Eastern Wisconsin to represent Mr. Harris. I represented him from the inception of the case in January 2000 through its sentencing in August 2000. Mr. Harris continued to consult with me for a year or so thereafter. The government alleged that Mr. Harris had been the perpetrator of a number of bank robberies in the Milwaukee area. In the particular robbery charged in this case, Mr. Harris had entered the bank, demanded money from the teller, and indicated to her that he had a firearm. After a jury trial, Mr. Harris was convicted on one count of bank robbery. He was sentenced to 210 months in the custody of the Bureau of Prisons, three years of supervised release, \$2,180 in restitution, and a special assessment of \$100.

Counsel for the United States:

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6. *United States v. Karos*, No. 00-CR-170-LA (E.D. Wis. 2000) (Adelman, J.).

The United States Attorney's Office for the Eastern District of Wisconsin charged Ms. Karos and Mr. O'Hara with the sale and receipt of stolen goods and conspiracy to defraud the United States. The indictment alleged that Ms. Karos, who owned an art

gallery in Milwaukee, had come into possession of antique items (a sextant and an armillary sphere) which had been stolen from a museum in Rome, Italy. Upon realizing that the items were stolen, Ms. Karos had given the items to an individual to sell on the black market, then later requested their return. When the individual refused to return the items, Mr. O'Hara, who was romantically involved with Ms. Karos, allegedly lured the individual to Ms. Karos' home, beat him, and threatened to harm his pregnant wife. Mr. O'Hara also retained me as local counsel beginning in late 2000 or early 2001. After a jury trial, Mr. O'Hara was convicted. Along with co-counsel, I prepared witnesses, filed pretrial motions, examined witnesses at trial, made arguments, prepared sentencing memoranda and other documents, and argued at sentencing. The court sentenced Mr. O'Hara to 120 months in the custody of the Bureau of Prisons, three years of supervised release, a fine of \$25,000, and a special assessment of \$200.

Counsel for the United States:

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 (Formerly Assistant United States Attorney)
 Biskupic & Jacobs, S.C.
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 (262) 241-0033

Tracy M. Johnson
 United States Attorney's Office
 Eastern District of Wisconsin
 517 East Wisconsin Avenue, Room 530
 Milwaukee, WI 53202
 (414) 297-1700

Counsel for defendant Karos:

Stephen M. Glynn
 P.O. Box 2226
 Pineland, FL 33945
 (414) 446-9509

Co-counsel for defendant O'Hara:

Allan A. Ackerman
 Allan A. Ackerman, P.C.
 39 South LaSalle Street, Suite 1218
 Chicago, IL 60603
 (312) 332-2891

7. *United States v. Nevarez-Diaz, et al.*, No. 97-CR-211-CNC (E.D. Wis. 1997) (Clevert, J.).

The United States Attorney's Office for the Eastern District of Wisconsin charged six defendants with various drug offenses. The indictment alleged that the main defendant procured cocaine, and then distributed it in Milwaukee via a network of retail-level dealers. The indictment alleged that Ms. Hansen made hundreds of retail-level sales of cocaine out of a bar she operated. I represented Ms. Hansen in the federal case from November 1997 through July 1998. I reviewed the discovery, filed motions, responded to pleadings filed by the government, assisted Ms. Hansen in cooperating with the government, negotiated her plea agreement, and represented her at her plea and sentencing hearings. After Ms. Hansen pled guilty, the court sentenced her to 46 months in the custody of the Bureau of Prisons, five years of supervised release, and a \$100 special assessment. Ms. Hansen's family also retained me on an appeal from a trial ruling in a parallel case in state court. The charges in that state case arose out of the same facts that had given rise to the federal case, and that interplay created an issue on appeal. The case went up to the Wisconsin Supreme Court, which ruled in favor of Ms. Hansen. The docket number for the Wisconsin Supreme Court case is 1999-AP-001128-CR.

Counsel for the United States:

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Counsel for State of Wisconsin on appeal:

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8. *United States v. O'Neill, et al.*, No. 97-CR-98-JPS (E.D. Wisc. 1997) (Stadtmueller, J.)

The United States Attorney's Office for the Eastern District of Wisconsin charged seventeen defendants with various acts of racketeering and conspiracy. The indictment alleged that the defendants had been members of the Wisconsin chapter of the Outlaws Motorcycle Club, and that as part of that group, they had committed acts of murder, attempted murder, arson, theft and other crimes in connection with a rivalry between the Outlaws and the Chicago chapter of the Hell's Angels motorcycle club. I was appointed by Federal Defender Services of Eastern Wisconsin to represent Mr. McVay, who was alleged to have been an accessory to a murder committed by the lead defendant, Mr. O'Neill. I represented Mr. McVay through his guilty plea and beyond his sentencing in October 2000. As Mr. McVay's sole counsel, I reviewed discovery, filed motions, responded to government pleadings, coordinated with other defense counsel, negotiated Mr. McVay's plea agreement, and represented him at the plea hearing and at sentencing. Several defendants also filed an interlocutory appeal to the Seventh Circuit, for which I served as lead appellate counsel. I took primary responsibility for writing the brief, and argued the case before the Seventh Circuit. At his sentencing on October 6, 2000, the court sentenced Mr. McVay to 84 months in the custody of the Bureau of Prisons, three years of supervised release, a \$50 special assessment, and a \$5,000 fine.

Counsel for the United States:

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Ann T. Bowe
Bowe Law Offices
2929 West Highland Boulevard

Milwaukee, WI 53208
(414) 344-4434

Counsel for defendant Morgan:

Edward J. Hunt
Hunt Law Group, SC
829 North Marshall Street
Milwaukee, WI 53202
(414) 225-0111

Counsel for defendant Kruppstadt:

Daniel D. Resheter, Jr.
Daniel D. Resheter, Jr. Law Office
3757 South Howell Avenue
Milwaukee, WI 53207
(414) 481-9972

Counsel for defendant Mroch:

Michael R. Barth
Law Office of Michael R. Barth
W501 Honey Creek Road
Burlington, WI 53105
(262) 642-7179

Counsel for defendant Blake:

James C. Reiher
The Schroeder Group, SC
20800 Swenson Drive, Suite 475
Waukesha, WI 53186
(262) 798-8220

Counsel for defendant Brock:

Thomas G. Halloran
Halloran Law Offices
1463 St. Andrews Drive
Oconomowoc, WI 53066
(262) 244-7405

Counsel for defendant Hanson:

Robert J. Penegor
Penegor & Lowenberg
16655 West Bluemound Road, Suite 190
Brookfield, WI 53005
(262) 786-3522

Counsel for defendant Kadlec:

Mark S. Rosen
Rosen & Holzman, Ltd.
400 West Moreland Boulevard, Suite C
Waukesha, WI 53188
(262) 544-5804

Counsel for defendant Meinen:

Robert G. LeBell
LeBell, Dobroski, Morgan & Meylink, LLP
309 North Water Street, Suite 350
Milwaukee, WI 53202
(414) 276-1233

Counsel for defendant Miller:

Raymond M. Dall'Osto
Gimbel, Reilly, Guerin & Brown, LLP
Two Plaza East
330 East Kilbourn Avenue, Suite 1170
Milwaukee, WI 53202
(414) 271-1440

Counsel for defendant Powers:

Christopher T. Van Wagner
Van Wagner & Wood, S.C.
One North Pinckney Street, Suite 300
Madison, WI 5370
(608) 284-1200

Counsel for defendant Rostron:

Dean A. Strang
Hurley, Burish & Stanton, S.C.

33 East Main Street, Suite 400
P.O. Box 1528
Madison, WI 53701
(608) 257-1528

Counsel for defendant Schneider:

Lewis A. Wasserman
Law Offices of Jean M. Kies, SC
135 West Wells Street, Suite 330
Milwaukee, WI 53203
(414) 272-7622

Counsel for defendant Jensen:

Charles W. Giesen
Giesen Law Offices, SC
P.O. Box 909
Madison, WI 53701
(608) 255-8200

9. *United States v. Mueller, et al.*, No. 94-CR-131-RTR (E.D. Wis. 1994) (Randa, J.).

The United States Attorney's Office for the Eastern District of Wisconsin charged the three defendants with building and operating a marijuana growing operation on a piece of rural land near Watertown, Wisconsin. At that time, this was the largest marijuana growing operation to have been charged in the Eastern District. I represented the United States as an Assistant United States Attorney. I was the lead attorney on the case from mid-1994, when the investigation began, until at least January 1997, just prior to my leaving the government for private practice. I conducted the investigation, supervising the agents of the multi-jurisdictional task force who collected the evidence. I drafted the charges and presented the indictment to the grand jury. I organized the discovery, filed motions, responded to motions from the defendants, and negotiated plea agreements with them. All three defendants pled guilty. Defendant W. Mueller received 84 months in the custody of the Bureau of Prisons, three years of supervised release, a \$2,000 fine and a \$250 special assessment. Defendant V. Mueller received three years' probation, a \$1,000 fine and a \$50 special assessment. Defendant Eichstaedt received 66 months in the custody of the Bureau of Prisons, three years of supervised release, a \$5,000 fine and a special assessment.

Counsel for defendant W. Mueller:

Robin Shellow
Shellow & Shellow, SC

324 West Vine Street
Milwaukee, WI 53212
(414) 263-4488

Counsel for defendant V. Mueller:

David P. Lowe
Law Offices of David P. Lowe, S.C.
330 East Kilbourn Avenue
Two Plaza East, Suite 1250
Milwaukee, WI 53202
(414) 727-2200

Counsel for defendant Eichstaedt:

Patrick C. Brennan
Brennan Law Offices, LLC
1110 North Old World Third Street, Suite 200
Milwaukee, WI 53203
(414) 763-4200

10. *United States v. Gliottoni, et al.*, No. 92-CR-213-JBZ (N.D. Ill. 1992) (Zagel, J.).

The United States Attorney's Office for the Northern District of Illinois charged three defendants with racketeering, extortion and threats. Defendant Panici was the mayor of Chicago Heights, Illinois, defendant Gliottoni was the police chief, and defendant Marshal was an elected city official. This indictment was part of a series of public corruption indictments brought against elected and appointed officials in the City of Chicago Heights, Illinois. The various indictments included allegations of bribery, extortion, rigged public contracts, and similar abuses of public trust. The three defendants in this particular indictment all pled guilty. I represented the United States, along with another Assistant United States Attorney. I worked on the case for approximately two years, from 1992 to 1994; I was assigned to the case after indictment, in anticipation that Mr. Gliottoni would be proceeding to trial. Along with Attorney Gair, the senior prosecutor on the case, I conducted trial preparation work, including preparing witnesses and organizing the evidence. Once Mr. Gliottoni indicated a desire to plead guilty, Attorney Gair and I handled the plea negotiations, plea and sentencing. Mr. Panici received 120 months in the custody of the Bureau of Prisons, three years of supervised release, and a \$1.1 million fine. Mr. Gliottoni received 60 months in the custody of the Bureau of Prisons, three years of supervised release, and a \$1.1 million fine, along with a \$150 special assessment. Ms. Marshal received 41 months in the custody of the Bureau of Prisons and three years of supervised release.

Co-counsel:

Christopher C. Gair
(Formerly Assistant United States Attorney)
Gair Law Group, Ltd.
One East Wacker Drive, Suite 2050
Chicago, IL 60601
(312) 600-4900

Counsel for defendant Panici:

Marcia G. Shein
Law Offices of Marcia Shein
1945 Mason Mill Road, Suite 200
Decatur, GA 30033
(404) 633-3797

Steven Popuch
Steven L. Popuch & Assoc.
738 North LaSalle Street, Fourth floor
Chicago, IL 60610
(312) 251-0600

Counsel for defendant Gliottoni:

Anthony J. Onesto
Anthony J. Onesto & Associates, Ltd.
6832 West North Avenue
Chicago, IL 60707
(773) 889-7100

Defendant Marshall appeared *pro se*.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Since becoming a judge, I have presented legal education programs for organizations, such as the Federal Judicial Center, the American Bankruptcy Institute, the National Conference of Bankruptcy Judges, and bankruptcy bar associations around the country. I work with other colleagues to implement programs to enhance access to the courts, such

as our court's Pro Se Help Desk, which was created by Judge Kelley. I also am on the judges' advisory council of the American Bankruptcy Institute's C.A.R.E. (Credit Abuse Resistance Education) program, founded by Judge Ninio, to educate young people about the consequences of credit abuse. I serve on boards of organizations that help educate lawyers, including the board of directors of the American Bankruptcy Institute and the National Conference of Bankruptcy Judges. I am a faculty member for the Advanced Consumer Bankruptcy Practice Institute, a NITA-style trial techniques training program created by Judge Lundin, in which faculty members give two-day boot camps around the country, and are reimbursed only their expenses.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Between 1997 and 2005, I taught two different classes at Marquette Law School in Milwaukee, Wisconsin. I did not teach both courses each year, or each semester, or at the same time. I taught first-year legal research and writing for several years. The course provided first-year law students with basic legal research skills, and required them to provide written work for review and critique. I also taught a course called "Starting and Managing a Law Practice," along with Attorney Gwen Connolly, another solo practitioner. This was a practical, workshop-style course preparing students for opening their own law practices. It involved exercises such as having students research the cost of finding office space, equipping that office, researching malpractice and other kinds of insurance, research case management and billing software, and consider marketing strategies. No syllabus available.

20. **Deferred Income/Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no such arrangements, and expect no such benefits.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any plans, commitments or agreements to pursue outside employment.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items

exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Statement of Net Worth.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not anticipate that any family members might pose conflicts of interest. I do not hold any financial interest that would pose conflicts of interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will continue to closely follow 28 U.S.C. 455, Canon 3 of the Code of Conduct for United States Judges, as well as the related advisory opinions issued by the ethics committee of the Judicial Conference. I would continue to utilize the court's automated conflict checking system. I would assess any potential conflicts, and determine for myself whether I believed they justified my recusal. If so, I would follow the procedure used by the district court for the Eastern District of Wisconsin in recusing myself.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During the time I served as an Assistant United States Attorney, the ethics code for prosecutors prohibited me from providing individual pro bono representation.

While in private practice, I provided pro bono and public services in several ways. Throughout the eight or nine years I was in private practice, I accepted private cases at no fee for individuals of limited means. I also privately represented financially-distressed individuals for reduced fees. At any given time, 5% or less of my case load was comprised of these cases. I also accepted cases at substantially reduced fees from the

State Public Defender of Wisconsin and Federal Defender Services of Wisconsin, as well as accepting appointments directly from judges when asked. At any given time, such appointed cases might comprise anywhere from 40% to 80% of my case load. I served on the boards of directors of both the Wisconsin Public Defender and Federal Defender Services of Wisconsin. I volunteered at the Milwaukee County Circuit Court's family law self-help center, and served on a sentencing advocacy advisory council for The Benedict Center. This kind of work took up less than 5% of my work time (although there was more time involved with regard to the Federal Defender when we were in the process of setting up the program under Judge Stadtmueller's direction and guidance, and again when we had to hire new executive directors, as we did twice during my term on the board).

In terms of other community involvement: Between January 2007 and fall 2009, I volunteered at the soup kitchen at the Cathedral of St. John the Evangelist in downtown Milwaukee. Between approximately 1995 and 1998, I mentored junior high and high school students in the YMCA's Sponsor-a-Scholar program.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted an application to the Wisconsin Federal Nominating Commission in December 2013. In February 2014, I interviewed with the Commission in Milwaukee, Wisconsin, and, on February 13, 2014, was informed by the Commission that my name was being forwarded to Senators Ron Johnson and Tammy Baldwin for their consideration. Since February 14, 2014, I have been in contact with officials from the Office of Legal Policy at the U.S. Department of Justice. On April 16, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On _____, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Pepper, Pamela	2. Court or Organization United States District Court, E.D. Wisconsin	3. Date of Report 05/02/2014
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 05/02/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 05/02/2014
7. Chambers or Office Address 517 East Wisconsin Avenue Room 140 Milwaukee, WI 53202		
<p align="center">IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.</p>		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Trustee	Trust #1
2. Ex-officio director	Eastern District of Wisconsin Bar Association
3. Associate Editor	American Bankruptcy Law Journal
4. Seventh Circuit Governor; Secretary	National Conference of Bankruptcy Judges
5. Member, Board of Directors	American Bankruptcy Institute

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT
 Page 2 of 8

Name of Person Reporting	Date of Report
Pepper, Pamela	05/02/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 04/08/2012	American Bankruptcy Law Journal, pay for editing work	\$1,317.75
2. 06/27/2012	American Bankruptcy Law Journal, pay for editing work	\$1,317.75
3. 09/25/2012	American Bankruptcy Law Journal, pay for editing work	\$1,317.75
4. 12/12/2012	American Bankruptcy Law Journal, pay for editing work	\$1,317.75
5. 04/02/2013	American Bankruptcy Law Journal, pay for editing work	\$1,287.75
6. 07/01/2013	American Bankruptcy Law Journal, pay for editing work	\$1,287.75
7. 09/30/2013	American Bankruptcy Law Journal, pay for editing work	\$1,287.75
8. 12/15/2013	American Bankruptcy Law Journal, pay for editing work	\$1,287.75

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.
(Dollar amount not required except for honoraria.)*
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. _____	_____	_____	_____	_____
2. Exempt	_____	_____	_____	_____
3. _____	_____	_____	_____	_____

FINANCIAL DISCLOSURE REPORT
Page 3 of 8

Name of Person Reporting	Date of Report
Pepper, Pamela	05/02/2014

4. _____
5. _____

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Pepper, Pamela	Date of Report 05/02/2014
--	------------------------------

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.			
2.	Exempt		
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Pershing, LLC	Loan from Profit Sharing Plan #1	J
2.	Chase	Revolving credit account	J
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Pepper, Pamela	05/02/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. American Funds High-Income Municipal Bond Fund	B	Dividend	K	T	Exempt				
2. American Funds Growth Fund of America	A	Dividend	J	T					
3. Penn Mutual Variable Universal Life: Ssg Index 500 Fund	A	Interest	J	T					
4. Penn Mutual Variable Universal Life: T. Rowe Price Flexibly Mgd Fund	A	Interest	J	T					
5. The Principal Adjustable Life	A	Dividend	K	T					
6. Profit Sharing Plan #1									
7. --Principal Investors Real Estate Sec.	A	Dividend	K	T					
8. --Principal Investors Diversified International Fund	A	Dividend	J	T					
9. --Principal Investors Small Cap Blend	A	Dividend	J	T					
10. --Principal Investors Mid Cap Blend Fund	A	Dividend	L	T					
11. --Principal Capital Appreciation Fund	A	Dividend	K	T					
12. --Principal Equity Income Fund	A	Dividend	J	T					
13. --Principal Investors Money Market Fund	A	Interest	J	T					
14. IRA #1									
15. --Principal Mutual Funds MidCap	A	Dividend							
16. --Principal Mutual Funds Small Cap Blend	A	Dividend							
17. U.S. Savings Bonds, Series EE	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less P = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Pepper, Pamela	05/02/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Trust #1									
19. --Equitable Bank cash accounts	A	Interest	J	T					
20. 401k #1									
21. --American Funds EuroPacific Growth	A	Dividend							
22. --American Funds Fundamental Investors	A	Dividend							
23. --Nuveen Equity Index	A	Dividend							
24. PNC Bank cash accounts		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$100,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$30,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Pepper, Pamela	05/02/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

III-B. Information is no longer reportable, pursuant to Section 102(e)(2).

FINANCIAL DISCLOSURE REPORT
Page 8 of 8

Name of Person Reporting	Date of Report
Pepper, Pamela	05/02/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Pamela Pepper*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		3	700	Notes payable to banks-secured			
U.S. Government securities-Series EE bonds			150	Notes payable to banks-unsecured			
Listed securities - see schedule		170	302	Notes payable to relatives			
Unlisted securities				Notes payable to others		13	142
Accounts and notes receivable:		13	142	Accounts and bills due		11	600
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned				Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		9	000				
Cash value-life insurance		33	640				
Other assets itemize:							
Thrift Savings Plan		207	527				
FERS		5	500				
				Total liabilities		24	742
				Net Worth		418	219
Total Assets		442	961	Total liabilities and net worth		442	961
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts		149	000	Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>Listed Securities</u>	
American Funds Growth Fund of America	\$ 4,471
American Funds High-Income Municipal Bond Fund	17,046
Principal Capital Appreciation Fund	33,046
Principal Diversified International Fund	10,715
Principal Equity Income Fund	13,282
Principal Investors Money Market Fund	5,382
Principal MidCap Fund	53,990
Principal Real Estate Securities Fund	22,769
Principal SmallCap Blend Fund	9,601
Total Listed Securities	<u>\$ 170,302</u>

AFFIDAVIT

I, Pamela Pepper, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

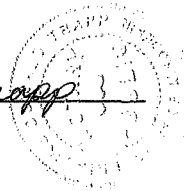
5/2/2014

(DATE)

[Signature]

(NAME)

Kristine Oswald Hagg
(NOTARY)



UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Brenda Kay Sannes

2. **Position:** State the position for which you have been nominated.

United States District Court Judge for the Northern District of New York

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: United States Attorney's Office for the Northern District of New York
100 South Clinton Street
P.O. Box 7198
Syracuse, New York 13261

Residence: Skaneateles, New York

4. **Birthplace:** State year and place of birth.

1958; Billings, Montana

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1980 – 1983, University of Wisconsin Law School; J.D. (*magna cum laude*), 1983

1976 – 1980, Carleton College; B.A. (*magna cum laude*), 1980

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1995 – present
 United States Attorney's Office for the Northern District of New York
 100 South Clinton Street
 P.O. Box 7198
 Syracuse, New York 13261
 Syracuse Office Manager (2010 – present)
 Chief, Appellate Division (2005 – present)
 Assistant United States Attorney (1995 – present)

Spring 2007, Spring 2006
 Cornell Law School
 Myron Taylor Hall
 Ithaca, New York 14853
 Adjunct Professor of Law

2003 – 2005
 United States Attorney's Office for the Central District of California
 312 North Spring Street
 Suite 1200
 Los Angeles, California 90012
 (on detail from the Northern District of New York)
 Anti-Terrorism Advisory Council Coordinator (2004 – 2005)
 Deputy Chief, Organized Crime and Terrorism Section (2004 – 2005)
 Assistant United States Attorney (2003 – 2005)

1988 – 1995
 United States Attorney's Office for the Central District of California
 312 North Spring Street
 Suite 1200
 Los Angeles, California 90012
 Deputy Chief, Narcotics Section (January – October 1994)
 High Intensity Drug Trafficking Coordinator (January – October 1994)
 Assistant United States Attorney (1988 – 1995)
 (Maternity leave November 1994 – March 1995)

1984 – 1988
 Wyman, Bautzer, Christensen, Kuchel & Silbert
 (Dissolved)
 Los Angeles, California
 Litigation Associate

1983 – 1984
Honorable Jerome Farris
United States Court of Appeals for the Ninth Circuit
1010 Fifth Avenue
Suite 1030
Seattle, Washington 98104
Law Clerk

June – August 1983
Wyman, Bautzer, Rothman, Kuchel & Silbert
(Dissolved)
Los Angeles, California
Summer Associate

June – August 1982
Dewey, Ballantine, Bushby, Palmer & Wood
(Dissolved)
New York, New York
Summer Associate

Summer 1981
Boardman, Suhr, Curry and Field
(now Boardman and Clark)
1 South Pinckney Street
Suite 410
Madison, Wisconsin 53703
Summer Associate

January 1981
Van Metre, Hanson
122 West Mifflin Street
Madison, Wisconsin 53703
Law Clerk

May – July 1980
Marty's Downtown
(Dissolved)
Northfield, Minnesota 55057
Waitress

Other Affiliations (uncompensated):

2005 – 2008, 1999 – 2000
Teddy Bear Child Care Center, Inc.
100 South Clinton Street

Syracuse, New York 13261
Board Member

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Professional:

Commendations in recognition of outstanding performance, dedicated service and/or successful prosecutions from the following agencies:
Federal Bureau of Investigation (2005)
Los Angeles Police Department (2005)
United States Postal Inspection Service (2001)
International Narcotic Enforcement Officers Association (2000)
United States Customs Service (1999)
Organized Crime Drug Enforcement Task Force (1999, 1992)
Internal Revenue Service Criminal Investigation Division (1995)
United States Attorney for the Eastern District of Oklahoma (1994)
Los Angeles Joint Drug Intelligence Group (1994)
Orange County Regional Narcotics Suppression Program (1994)
Southern California Drug Task Force (1994)
United States Customs Service (1994)
United States Department of Justice (1991)

Academic:

Order of the Coif, University of Wisconsin Law School (1983)
Articles Editor, *Wisconsin Law Review* (1982 – 1983)
American Jurisprudence Book Awards at the University of Wisconsin Law School in
Contracts I (1980), Civil Procedure (1980), Contracts II (1981) and Professional
Responsibility (1982)

Distinction in the English Department at Carleton College, 1980

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Federal Bar Council

Los Angeles County Bar Association

Northern District of New York Federal Court Bar Association,
Criminal Practice Committee (2010 – present)

Women Lawyers' Association of Los Angeles

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York, 1996
California, 1985
Wisconsin, 1983

My bar license in Wisconsin was briefly suspended for nonpayment of bar dues from November 1987 to January 1988. My license in Wisconsin was also suspended from 1992 through 1994 for nonpayment of bar dues. My membership was reinstated in 1994 so that I could waive into the New York bar, after which it lapsed again from 1995 through 1996 for nonpayment of dues. In 1996, I learned that I had to submit a petition in order to voluntarily resign and did so. In addition, I have been inactive in the State Bar of California during the time periods when I was not practicing in California, from 1995 through 2003 and from 2006 to the present. There have been no other lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Second Circuit, 1996
United States Court of Appeals for the Ninth Circuit, 1989
United States District Court for the Central District of California, 1985
United States District Court for the Northern District of New York, 1995

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held.

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Baltimore Woods Nature Center (approximately 2000 – present)
Committee Member for the annual Environmental Chef Event
(2012 – present)

Skaneateles Hockey Boosters (2013 – 2014)
Committee Member

Teddy Bear Child Care Center, Inc. (1999 – 2000, 2005 – 2008)
Board Member

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to Question 11a currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

In my capacity as Chief of the Appellate Division, I have participated in the creation of memoranda providing guidance to Assistant United States Attorneys

for and on behalf of the United States Attorney's Office for the Northern District of New York, but these materials are privileged.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

November 7, 2013: Panel Speaker, Sentencing Update, Northern District of New York Federal Court Bar Association, Continuing Legal Education Program, Syracuse, New York. PowerPoint supplied.

May 30, 2013: Speaker, Protecting the Record: Avoiding Ineffective Assistance of Counsel Litigation, Northern District of New York Federal Court Bar Association, Continuing Legal Education Program, Albany, New York. PowerPoint supplied.

March 2005: Speaker, Myths About the USA Patriot Act, American Academy of Otolaryngology, Whistler Blackcomb, Canada. PowerPoint supplied.

In my capacity as Chief of the Appellate Division since 2005, I have provided training to Assistant United States Attorneys regarding decisions from the Supreme Court and the United States Court of Appeals for the Second Circuit. I have not provided outlines of this training because it is privileged.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

"Professors Clymer and Sannes Offer Class on Terrorism and Law," Cornell Law Forum (Fall 2006). Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I served as a volunteer Temporary Judge in the Los Angeles Municipal Court's Temporary Judge Program on approximately two occasions in 1993 and 1994. This program allows attorneys who have been licensed for more than ten years and are in good standing with the bar to serve as temporary judges hearing civil matters. In small claims court there are no lawyers, the rules of evidence do not apply, and all matters are heard and decided by the Temporary Judge. I do not recall the facts from any of the cases, and there are no transcripts of any of the hearings at which I presided.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I presided over a total of four to six cases during the two instances in which I served as a Temporary Judge.

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I considered the cases assigned to me on a case by case basis and did not find any basis for recusal. There were no requests for recusal in the matters that I handled as a Temporary Judge.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office, other than as a Temporary Judge, nor have I ever been an unsuccessful candidate or nominee.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held membership or office in any political party or election committee, nor have I held a position or played a role in a political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

The Honorable Jerome Farris
United States Court of Appeals for the Ninth Circuit
(1983 – 1984)

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1984 – 1988
Wyman, Bautzer, Christensen, Kuchel & Silbert
(Dissolved)
Los Angeles, California
Litigation Associate

1988 – 1995
United States Attorney's Office for the Central District of California
312 North Spring Street
Suite 1200
Los Angeles, California 90012
Deputy Chief, Narcotics Section (January – October 1994)
High Intensity Drug Trafficking Coordinator (January – October 1994)
Assistant United States Attorney (1988 – 1995)
(Maternity leave November 1994 – March 1995)

2003 – 2005

United States Attorney's Office for the Central District of California
312 North Spring Street
Suite 1200
Los Angeles, California 90012
(on detail from the Northern District of New York)
Anti-Terrorism Advisory Council Coordinator (2004 – 2005)
Deputy Chief, Organized Crime and Terrorism Section (2004 – 2005)
Assistant United States Attorney (2003 – 2005)

1995 – present

United States Attorney's Office for the Northern District of New York
100 South Clinton Street
P.O. Box 7198
Syracuse, New York 13261
Syracuse Office Manager (2010 – present)
Chief, Appellate Division (2005 – present)
Assistant United States Attorney (1995 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

None.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1984 to 1988, I worked as an associate in a large law firm in Los Angeles. For the first three years I worked on general civil litigation in state and federal courts. I took depositions, drafted pleadings, and drafted and argued motions. I also worked on two significant civil jury trials in state court, assisting the partners who handled the trials. During my last year at the law firm I worked for a partner who had a criminal practice, primarily representing defendants charged with federal offenses.

Since 1988, I have worked as an Assistant United States Attorney for the Northern District of New York and the Central District of California representing the government in federal district court and in the Second and Ninth Circuits. From 1988 until 1994, I participated in the investigation and prosecution of a wide variety of federal crimes, including offenses involving illegal drugs, firearms, theft, mail fraud, money laundering, and bank robbery. In 1994, I was the High Intensity Drug Trafficking Coordinator for the Central District of California, with administrative and

leadership responsibilities in coordinating law enforcement drug enforcement efforts. From 1995 until 2003, I participated in the investigation and prosecution of a wide variety of federal crimes, including offenses involving illegal drugs, firearms, theft, mail fraud, money laundering, child exploitation, tax violations and immigration violations in the Northern District of New York. From January 2004 until June 2005, I was primarily involved in coordinating law enforcement and anti-terrorism efforts and supervising Assistant United States Attorneys investigating and prosecuting terrorism offenses while on detail to the Central District of California. Since September 2005, when I became the Appellate Chief in the Northern District of New York, my practice has focused on appellate work. I currently supervise all the criminal and civil appellate work in the United States Attorney's Office and also have my own appellate caseload.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my first three years as an associate at a law firm in Los Angeles, I was engaged in general civil litigation representing primarily businesses. In one of the cases that went to trial we represented a business suing an insurance company for bad faith failure to pay a claim. In another jury trial, we defended a movie studio on a breach of contract claim. During my last year in the law firm, I assisted a partner in defending defendants charged with defense industry contractor fraud, mail fraud and narcotics offenses in federal court.

As an Assistant United States Attorney since 1988, I have represented the government in the investigation and prosecution of a wide variety of federal crimes.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

100% of my practice has been in litigation. From 1988 to 2003, I appeared regularly in federal district court for pretrial motions, sentencings, supervised release revocation proceedings and detention hearings. I did not appear in court from 2004 to 2005 while I was working as the Anti-Terrorism Advisory Counsel Coordinator in the United States Attorney's Office in Los Angeles. Since September 2005, I have appeared regularly in the Second Circuit Court of Appeals.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 95% |
| 2. state courts of record: | 5% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 10% |
| 2. criminal proceedings: | 90% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

From March 1995 until July 2003, I was the sole or lead trial counsel in five jury trials in the Northern District of New York. From 1988 to 1994, I tried eleven jury trials in the Central District of California. I was the sole or lead trial counsel in ten of the trials.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 0% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The following matters are listed in reverse chronological order by end date of the litigation.

1. *United States v. Guzman*, 591 F.3d 83 (2d Cir. 2010).

In *Guzman*, I handled the government's appeal from a district court's decision that Congress exceeded its authority in enacting the registration requirement in the Sex Offender Registration and Notification Act ("SORNA"), 42 U.S.C. § 16913. I wrote the appellate brief, which was filed in February 2009, and argued the appeal in the Second Circuit Court of Appeals on September 14, 2009. On January 7, 2010, the Second Circuit (Circuit Judges Miner, Straub and Wesley) upheld Congress's authority to enact the failure to register offense in SORNA, 18 U.S.C. § 2250(a), and the underlying registration requirement, 42 U.S.C. § 16913. Our office received several subsequent constitutional challenges to SORNA, which I also successfully defended in the Second Circuit. See *United States v. Hester*, 589 F.3d 86 (2d Cir. 2009); *United States v. Robbins*, 729 F.3d 131 (2d Cir. 2013); and *United States v. Brunner*, 726 F.3d 299 (2d Cir. 2013).

Counsel for defendants
in the SORNA appeals:

Lisa A. Peebles
Federal Public Defender
James Egan
Research and Writing Specialist
4 Clinton Square, Third Floor
Syracuse, New York 13202
(315) 701-0080
(Defendants Guzman, Robbins
and Brunner)

Molly Corbett
Research and Writing Specialist
Federal Public Defender Office
39 North Pearl St., Fifth Floor
Albany, New York 12207
(518) 436-1850
(Defendant Hester)

2. *United States v. Wilson*, 699 F.3d 235 (2d Cir. 2012).

I wrote the brief and argued the government's affirmative appeal from a district court's ruling suppressing evidence in *United States v. Wilson*, 754 F. Supp.2d 450 (N.D.N.Y. 2010). This case involved the legality of a vehicle stop by St. Regis Mohawk police officers shortly after the car entered the United States from Canada through an unmarked crossing on the St. Regis Mohawk Reservation. The stop occurred in an area that is the subject of a pending land dispute between the St. Regis Mohawks and the State of New

York known as “the Bombay triangle.” The district court suppressed duffle bags of marijuana found in the car, after concluding that the officers’ failure to comply with Immigration and Customs Enforcement policy and the stop outside their territorial jurisdiction violated the Fourth Amendment. I argued the appeal on February 17, 2012. On October 25, 2012, the Second Circuit (Circuit Judges Jacobs, Calabresi and Pooler) issued a decision reversing the district court’s decision, holding that the violation of an agency policy does not affect the constitutionality of a stop under the Fourth Amendment. This was an important case for the joint federal and tribal law enforcement efforts to combat smuggling through the St. Regis Mohawk reservation.

Counsel for defendant: Michael Rhodes-Devey
450 New Karner Road
P.O. Box 15072
Albany, New York 12205
(518) 452-1800

3. *United States v. Parker*, 554 F.3d 230 (2d Cir. 2009).

I wrote the brief and argued the appeal that led to the Second Circuit’s decision clarifying the buyer-seller exception to conspiracy liability. This case involved an appeal by three defendants who were convicted, following a six-day jury trial, of conspiring to possess crack cocaine with the intent to distribute. The defendants argued that the evidence was insufficient based upon the buyer-seller exception. I argued the appeal on December 8, 2008. The Second Circuit (Circuit Judges Feinberg, Leval and Cabranes) affirmed the convictions on February 3, 2009.

Counsel for defendants: Charles F. Wilson
Nevins & Nevins, LLP
102 Connecticut Boulevard
East Hartford, Connecticut 06108
(860) 289-4455
(Defendant Baker)

Vivian Shevitz,
46 Truesdale Lake Drive
South Salem, New York 10590
(914) 763-2122
(Defendant Fuller)

Catherine E. Stuckart,
156 Crary Avenue, Suite 2
Binghamton, New York 13905
(607) 798-1074
(Defendant Minott)

4. *United States v. Searle*, Case No., 00-cr-472 (FJS).

I represented the government in the investigation and prosecution of a defendant who had induced his girlfriend in Pennsylvania to sexually abuse her young children and transmit the images, via the Internet, to him in Syracuse, New York. The crime was not reported to law enforcement in Pennsylvania until almost ten months later, in October 1999, after the mother had died of a drug overdose, and the father found a videotape documenting the sexual abuse. I worked with law enforcement officers from the Federal Bureau of Investigation and the New York State Police during an investigation to obtain sufficient probable cause for search warrants at the defendant's residence in Syracuse in September 2000. I drafted the application for the search warrants that led to the discovery of the images of child pornography on his computer. The defendant pled guilty, and then filed an appeal challenging his sentence. I wrote the appellate brief and argued the appeal in the spring of 2003. The Second Circuit affirmed the sentence in *United States v. Searle*, 65 F. App'x 343 (2d Cir. 2003) (summary order).

Counsel for defendant: James F. Greenwald
Assistant Federal Public Defender
4 Clinton Square, Third Floor
Syracuse, New York 13202
(315) 701-0080

5. *United States v. Panek*, 97-cr-446 (FJS).

I worked with law enforcement officers from the Central District of New York Drug Enforcement Task Force during a two-year investigation to obtain sufficient corroboration to prosecute a group of individuals responsible for distributing over 2,000 pounds of marijuana, obtained from Arizona, in Syracuse. I drafted the charging instruments charging eight defendants with marijuana and money laundering charges. One of the defendants was a law enforcement officer who admitted that he queried a law enforcement database on behalf of the defendants to help them determine whether certain suspected individuals were working as government informants. Five of the defendants pled guilty, and three proceeded to trial. I was the lead trial counsel in a twelve-day jury trial before the Honorable Frederick J. Scullin, Jr. in the summer of 1999 that resulted in the conviction of the two lead defendants. I wrote the appellate brief and, on December 14, 2001, argued the appeal. On April 2, 2003, the Second Circuit (Circuit Judges Feinberg, Pooler, and Sotomayor) affirmed the convictions in *United States v. Henry*, 325 F.3d 93 (2d Cir. 2003). This was one of the cases cited as a basis for the 2000 commendation award I received from the International Narcotic Enforcement Officers Association, Inc.

Co-counsel: Edward R. Broton
Assistant United States Attorney
100 South Clinton Street
Syracuse, New York 13261
(315) 448-0672

Counsel for defendants: Edward Z. Menkin
555 East Genesee Street
Syracuse, New York 13202
(315) 425-1212
(Defendant E. Panek)

Mark David Blum
P.O. Box 82
Manlius, New York 13104
(315) 420-9989
(Defendant A. Panek)

Lisa A. Peebles
Federal Public Defender
4 Clinton Square, Third Floor
Syracuse, New York 13202
(315) 701-0080
(Defendant Michael Gonzalski)
(Attorney was a solo practitioner at the time of trial)

6. *United States v. Bologna*, Case No. 97-cr-311 (FJS).

I represented the government in the investigation and prosecution of a Special Agent of the United States Customs Service for making false statements to the Customs Service. I drafted the indictment charging the defendant with making false statements in connection with his outside employment, hours worked and reports of investigation. I represented the government during a two-week jury trial in early 1999 before the Honorable Frederick J. Scullin, Jr., which led to the defendant's conviction on three false statement counts. After the district court granted the defendant's motion for a judgment of acquittal on two of the counts of conviction, I wrote the appellate brief and argued the appeal, successfully defending the conviction and obtaining a reversal of the district court's grant of a judgment of acquittal. The Second Circuit's decision is reported at *United States v. Bologna*, 58 F. App'x. 865 (2d Cir. 2003) (summary order). I received a commendation letter from the Commissioner of Customs, Raymond W. Kelly, for my work on this case.

Counsel for defendant: William J. Dreyer
John B. Casey
Dreyer Boyajian LLP
75 Columbia Street
Albany, New York 12210
(518) 478-2762

7. *United States v. Comer*, 96-cr-22 (RSP).

I represented the government in the investigation and prosecution of a major crack

cocaine and cocaine organization, which obtained kilogram-quantities of cocaine in New York City for distribution in Syracuse, New York. In December 1995 and January 1996, I worked with the Central New York Drug Enforcement Task Force in drafting affidavits in support of court-authorized wiretaps for three telephones. I also drafted indictments charging twenty-six defendants with cocaine and crack cocaine offenses. I was the lead trial counsel in an eleven-week, eleven-defendant jury trial before the Honorable Rosemary S. Pooler. The trial, which began in January 1997, was the largest case that had been tried in the Northern District of New York. Nine of the defendants were convicted. I wrote the appellate brief and, on February 28, 2000, argued the appeal. The Second Circuit (Circuit Judges Winter, Leval, and Magill) affirmed the convictions in *United States v. Giles*, 210 F.3d 356 (2d Cir. 2000) (unpublished). This was one of the cases cited as a basis for the 2000 commendation award I received from the International Narcotic Enforcement Officers Association, Inc.

Co-counsel:

Stephen C. Green
Assistant United States Attorney
100 South Clinton Street
Syracuse, New York 13261
(315) 448-0672

Counsel for defendants:

James F. Greenwald
Assistant Federal Public Defender
4 Clinton Square, Third Floor
Syracuse, New York 13202
(315) 701-0080
(Defendant Comer)
(Attorney was a solo practitioner at the time of trial)

Paul G. Carey
333 East Onondaga Street
Syracuse, New York 13202
(315) 474-0077
(Defendant Giles)

Craig P. Schlanger
120 East Washington Street
Suite 925
Syracuse, New York 13202
(315) 422-1122
(Defendant Wright)

Lisa A. Peebles
Federal Public Defender
4 Clinton Square, Third Floor
Syracuse, New York 13202
(315) 701-0080

(Defendant Russo)
(Attorney was a solo practitioner at the time of trial)

James H. Medcraf
614 James Street
Suite 100
Syracuse, New York 13203
(315) 478-3587
(Defendant Woods)

A. Sheldon Gould
447 East Washington Street
Syracuse, New York 13202
(315) 478-3186
(Defendant J. Menefield)

Thomas M. Robertson
333 East Onondaga Street
Syracuse, New York 13202
(315) 426-1149
(Defendant T. Menefield)

Dennis Claus
333 East Onondaga Street
Sixth Floor
Syracuse, New York 13202
(315) 729-7907
(Defendant Gregory)

Stephen Cimino
307 South Clinton Street
Syracuse, New York 13202
(315) 428-1000
(Defendant Williams)

Angelo Rinaldi
120 East Washington Street
Syracuse, New York 13202
(315) 478-5820
(Defendant Bradshaw)

Mark D. Romano
(Deceased)
(Defendant Stanley)

8. *United States v. Joseph LaPlante, Jr.*, 95-cr-238 (RSP).

I represented the government in the investigation and prosecution of a defendant who defrauded mail order companies by obtaining merchandise with checks written on a closed bank account. I drafted an indictment, which was filed in the Northern District of New York on June 29, 1995, charging the defendant with thirteen counts of mail fraud. I handled the three-day jury trial in February 1996 before the Honorable Rosemary S. Pooler, which resulted in convictions on all counts. I also wrote the appellate brief that led to the affirmance of the convictions in *United States v. LaPlante*, 108 F.3d 330 (2d Cir. 1997) (unpublished).

Counsel for defendant: James P. McGinty
233 East Washington Street
Syracuse, New York 13202
(314) 448-8400

9. *United States v. Ramos*, Case No. 92-cr-632 (HLH).

I represented the government in the investigation and prosecution of a large-scale cocaine organization that smuggled thousands of pounds of cocaine from Mexico into California in the roof of bus, using a transportation business as a front for their activities. During the investigation, I worked with law enforcement officers in drafting applications for court-authorized electronic surveillance. I coordinated the law enforcement investigation in the Central District of California with Assistant United States Attorneys and law enforcement agents in the Eastern District of Oklahoma, who investigated and prosecuted a murder in Oklahoma by members of the organization. I prepared a twenty-six count indictment, which was filed on July 22, 1992, charging seven defendants with various narcotics and money laundering offenses. Three of the defendants went to trial in the spring of 1993 before the Honorable Harry L. Hupp in Los Angeles and were convicted following a three-week jury trial. I was the lead government counsel at trial and on the appellate briefs. The Ninth Circuit Court of Appeals affirmed the convictions, with the exception of a structuring count that that was reversed because the jury was not instructed on the intent requirement established in 1994 in *Ratzlaf v. United States*. See *United States v. Ramos*, 51 F.3d 283 (9th Cir. 1995) (unpublished).

Co-counsel: Nicola T. Hanna
Gibson Dunn
3161 Michelson Drive
Irvine, California 92612
(949) 451-4270

Counsel for defendants:

Richard M. Callahan, Jr.
225 South Lake Avenue, Suite 300
Pasadena, California 91101

(626) 202-4060
(Defendant Mendes)

Gregory Nicolaysen
27240 Turnberry Lane, Suite 200
Valencia, California 91355
(818) 970-7247
(Defendant Mendoza)

Elsa Leyva
P.O. Box 862078
Los Angeles, California 90086
(626) 308-5325
(Defendant Hernandez)

10. *United States v. Maxwell Joelson*, 90-cr-565 (DWW).

I represented the government in the prosecution of a defendant for drug offenses arising from his importation of 770 kilograms of cocaine into the United States from Guatemala. I handled a three-day jury trial in February 1991, before the Honorable David W. Williams in Los Angeles, which led to the defendant's conviction on all counts. I wrote the appellate brief and, on June 7, 1993, argued the appeal. The Ninth Circuit (Circuit Judges Fletcher, Poole, and Thompson) affirmed the convictions in *United States v. Joelson*, 7 F.3d 174 (9th Cir. 1993).

Counsel for defendant: Lupe Martinez
1010 West Taylor Street
San Jose, California 95126
(408) 971-4249
(Formerly Assistant Federal Public Defender,
Los Angeles, California)

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As the Appellate Chief in the United States Attorney's Office, I am responsible for providing legal advice and training. I provide advice to Assistant United States Attorneys in the Northern District of New York on a broad range of legal issues. This includes advice during trial, advice regarding the likelihood of prevailing on Fourth Amendment challenges, and advice regarding litigation strategy. I also advise the United States Attorney regarding whether to appeal adverse district court decisions, including decisions

suppressing evidence or decisions granting judgments of acquittal. I participate in weekly management meetings with the United States Attorney.

I also conduct training for Assistant United States Attorneys on legal issues and current cases. In addition to various internal presentations throughout the year as cases and issues arise, I present an annual one-hour "Supreme Court Update" at the annual district-wide meeting for all Assistant United States Attorneys.

Since April 2010, I have served on the Criminal Practice Committee of the Northern District of New York Federal Court Bar Association. I have worked with defense counsel and other prosecutors to put together continuing legal education programs in criminal law. The programs include a panel discussion with judges of the Northern District of New York.

I have never performed any lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I co-taught Terrorism and the Law at Cornell University Law School in the Spring Semester of 2006 and the Spring Semester of 2007 with Steven Clymer. The class was open to law and non-law students. Syllabi provided.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Upon retirement, I will receive benefits from the Federal Employees Retirement System. I do not anticipate any other deferred income or benefits.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report,

required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would handle any matters involving actual or potential conflicts of interest in conformity with 28 U.S.C. § 455, the Code of Conduct for United States Judges and any other relevant statutes, ethical canons and rules. Specifically, I would recuse myself from any case that I worked on, supervised or on which I was consulted as an Assistant United States Attorney.

My husband, Steven Clymer, is currently the Chief of the Criminal Division in the United States Attorney's Office in the Northern District of New York. He has discussed the conflict-of-interest issue with the Office of the Deputy Attorney General of the Department of Justice and the United States Attorney for the Northern District of New York. If I am confirmed he will step down from his position as the Chief of the Criminal Division and become the Chief of the Appellate Division. He would not handle or supervise appeals in any case in which I was the district court judge.

My husband also is currently an adjunct professor at Cornell University. If confirmed, I would recuse myself from any cases in which Cornell University was a party as long as my husband worked there.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would refer to 28 U.S.C. § 455, the Code of Conduct for United States Judges and the Advisory Opinions of the Committee on Codes of Conduct, and would disclose any pertinent information to the litigants or recuse myself from deciding a case, as appropriate. If confirmed, I would review my initial caseload immediately to determine the presence of conflicts, and thereafter review cases as assigned.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During my first year in private practice I participated in providing pro bono assistance in a landlord-tenant matter that did not result in litigation.

As an Assistant United States Attorney, I am subject to the Department of Justice's policies and ethical rules restricting my ability to provide pro bono legal services to disadvantaged persons or entities. In 2005, when I was the Anti-Terrorism Advisory Council Coordinator in Los Angeles, however, I participated in community outreach with the Federal Bureau of Investigation. As an Assistant United States Attorney in Syracuse, I have worked to improve the legal system by working on the Criminal Practice Committee of the Northern District of New York Federal Court Bar Association and planning biannual continuing legal education programs for federal criminal practitioners.

I also have volunteered outside of the legal community. I was a board member for the nonprofit entity which contracts with and supports the licensed day care provider in the James M. Hanley Federal Building, the Teddy Bear Child Care Center, Inc. (TBCCC), for approximately five years, from 1999 to 2000 and from 2005 to 2008. While on the board I participated in interviewing and selecting a new day care provider for the federal building. From 2012 to the present I have been a committee member for the Baltimore Woods Nature Center, Inc. (BWNC) annual "Environmental Chef" event. This event raises funds to support BWNC educational programs, including its *Nature in the City* program which brings hands-on natural science learning to elementary urban school children.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On November 4, 2013, I submitted my application to the screening committee for Senator Charles E. Schumer to be United States District Court Judge for the Northern District of New York. On November 26, 2013, I met with one of Senator Schumer's regional representatives in Albany, New York. On December 10, 2013, I was interviewed by the screening committee in New York, New York.

In early January 2014, one of the members of the screening committee who was not present for the interview in New York interviewed me by telephone. On January 17, 2014, I was interviewed by Senator Schumer in New York, New York. On February 5, 2014, Senator Schumer's Chief Counsel notified me by telephone that Senator Schumer was going to recommend me to the President. Since February 6, 2014, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On March 19, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 8, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Sannes, Brenda K.	2. Court or Organization U.S. District Court, Northern District of New York	3. Date of Report 05/08/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Active Status	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 05/08/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 05/05/2014
7. Chambers or Office Address U.S. Courthouse 100 South Clinton Street Syracuse, New York 13261		
<p align="center">IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.</p>		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

	<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

	<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT
 Page 2 of 7

Name of Person Reporting Sannes, Brenda K.	Date of Report 05/08/2014
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☒ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1.		
2.		
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2013	Cornell University Law School - teaching
2. 2014	Cornell University Law School - teaching
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)
☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
 Page 3 of 7

Name of Person Reporting	Date of Report
Sannes, Brenda K.	05/08/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Residential Credit Services	Mortgage on rental property #1 (part VII, line 27)	M
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

Page 4 of 7

Name of Person Reporting	Date of Report
Sannes, Brenda K.	05/08/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "XY" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Amgen, Inc.	A	Dividend	J	T	Exempt				
2. Fidelity Asset Manager 20% Fund	A	Dividend	K	T					
3. Fidelity Asset Manager 50% Fund	A	Dividend	J	T					
4. Fidelity Blue Chip Growth Fund	A	Dividend	J	T					
5. Fidelity Capital Appreciation Fund	A	Dividend	J	T					
6. Fidelity Contrafund	A	Dividend	L	T					
7. Fidelity Contrafund K	E	Dividend	M	T					
8. Fidelity Diversified International Fund	A	Dividend	K	T					
9. Fidelity Dividend Growth Fund	A	Dividend	L	T					
10. Fidelity Freedom 2025 Fund	B	Dividend	L	T					
11. Fidelity Magellan Fund	A	Dividend	J	T					
12. Fidelity Municipal Money Market Fund	A	Dividend	J	T					
13. Fidelity Select Computers Portfolio	A	Dividend	J	T					
14. Fidelity Select Energy Portfolio	B	Dividend	L	T					
15. Fidelity Select Health Care Portfolio	D	Dividend	L	T					
16. Fidelity Select Leisure Portfolio	C	Dividend	K	T					
17. Fidelity Select Medical Equipment and Systems Portfolio	C	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,001 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$100,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 J2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other		T = Cash Market	
3. Value Method Codes: (See Column C2)					

FINANCIAL DISCLOSURE REPORT

Page 5 of 7

Name of Person Reporting	Date of Report
Sannes, Brenda K.	05/08/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Fidelity Select Software and Computer Portfolio	A	Dividend	J	T					
19. Fidelity Select Technology Portfolio	B	Dividend	J	T					
20. Fidelity Spartan 500 Index Fund	A	Dividend	K	T					
21. The Southern Company	A	Dividend	J	T					
22. New York State 529 Age-Based Option: Aggressive Growth Portfolio		None	J	T					
23. New York State 529 Age-Based Option: Conservative Growth Portfolio		None	J	T					
24. New York State 529 Age-Based Option: Income Portfolio		None	J	T					
25. New York State 529 Growth Stock Index Portfolio		None	J	T					
26. New York State 529 State Mid-Cap Stock Index Portfolio		None	J	T					
27. Rental Property #1 (Los Angeles, California)	F	Rent	N	W					
28. M & T Accounts	A	Interest	J	T					
29. M & T (IRA)	A	Interest	J	T					
30. Chase Account	A	Interest	J	T					
31. National Life Group Life Insurance	A	Dividend	K	T					
32. State Farm Life Insurance	A	Int./Div.	K	T					

1. Income Code Codes: (See Columns B1 and D4)	A = \$1,000 or less P = \$50,001 - \$100,000	B = \$1,001 - \$2,500 O = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Sannes, Brenda K.	05/08/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

Page 7 of 7

Name of Person Reporting	Date of Report
Sannes, Brenda K.	05/08/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ **Brenda K. Sannes**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		17	186	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		796	963	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		278	262
Real estate owned-add schedule		956	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		20	400				
Cash value-life insurance		40	084				
Other assets itemize:							
Thrift Savings Plan	1	371	401				
IRA (cash)		1	561				
				Total liabilities		278	262
				Net Worth	2	925	833
Total Assets	3	204	095	Total liabilities and net worth	3	204	095
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**Listed Securities

Amgen Inc.	\$ 11,928
Fidelity Asset Manager 20% Fund	28,958
Fidelity Asset Manager 50% Fund	14,493
Fidelity Blue Chip Growth Fund	948
Fidelity Capital Appreciation Fund	13,952
Fidelity Contrafund	60,791
Fidelity Contrafund K	189,943
Fidelity Diversified International Fund	49,172
Fidelity Dividend Growth Fund	53,918
Fidelity Freedom 2025 Fund	96,476
Fidelity Magellan Fund	1,112
Fidelity Municipal Money Market Fund	1,598
Fidelity Select Computers Portfolio	4,782
Fidelity Select Energy Portfolio	52,444
Fidelity Select Health Care Portfolio	56,851
Fidelity Select Leisure Portfolio	44,543
Fidelity Select Medical Equipment & Systems Portfolio	22,706
Fidelity Select Software & Computer Portfolio	3,840
Fidelity Select Technology Portfolio	9,968
Fidelity Spartan 500 Index Fund	48,711
The Southern Company	44
NY's 529 Age-Based Option: Aggressive Growth Portfolio	8,991
NY's 529 Age-Based Option: Conservative Growth Portfolio	8,222
NY's 529 Age-Based Option: Income Portfolio	217
NY's 529 Growth Stock Index Portfolio	6,228
NY's 529 Mid-Cap Stock Index Portfolio	6,127
Total Listed Securities	<u>\$ 796,963</u>

Real Estate Owned

Personal residence	\$ 574,000
Rental property (50% ownership)	382,500
Total Real Estate Owned	<u>\$ 956,500</u>

Real Estate Mortgages Payable

Personal residence	\$ 109,132
Rental property (50% ownership)	169,130
Total Real Estate Mortgages Payable	<u>\$ 278,262</u>

AFFIDAVIT

I, Brenda K. Sannes, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

5/8/14
(DATE)

Brenda K Sannes
(NAME)

Deanna Lieberman
(NOTARY)

DEANNA LIEBERMAN
Notary Public, State of New York
No. 01LI6105102
Qualified in WAYNE County
Commission Expires FEBRUARY 2, 2016

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Patricia Mary McCarthy
2. **Position:** State the position for which you have been nominated.

Judge, United States Court of Federal Claims
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Commercial Litigation Branch
Civil Division, U.S. Department of Justice
Ben Franklin Station, P.O. Box 480
Washington, DC 20044

Residence: Chevy Chase, Maryland
4. **Birthplace:** State year and place of birth.

1962; Medford, Massachusetts
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1986 – 1989, Cornell Law School; J.D., 1989

August – December 1985, Massachusetts Institute of Technology; no degree received

1980 – 1984, Colby College; A.B. (*cum laude*), 1984
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1994 – present
 United States Department of Justice
 Civil Division
 Commercial Litigation Branch
 Ben Franklin Station, P.O. Box 480
 Washington, DC 20044
 Assistant Director (2003 – present)
 Senior Trial Counsel (2001 – 2003)
 Trial Attorney (1994 – 2001)

1989 – 1994, Summer 1988
 Bingham, Dana & Gould (now Bingham McCutchen)
 150 Federal Street
 Boston, MA 02110
 Associate (1989 – 1994)
 Summer Associate (Summer 1988)

June 1994
 Plymouth County District Attorney's Office
 Fourth District Court of Plymouth County
 2200 Cranberry Highway
 West Wareham, MA 02576
 Special Assistant District Attorney (while at Bingham, Dana & Gould)

1984 – 1989
 Houghton Mifflin Company
 One Beacon Street
 Boston, MA 02108
 Production Freelancer

September 1987 – May 1988
 Professor Steven H. Shiffrin
 Cornell Law School
 Myron Taylor Hall
 Ithaca, NY 14853
 Research Assistant

Summer 1987
 Amnesty International U.S.A.
 1665 Massachusetts Avenue
 Cambridge, MA 02140
 Public Interest Fellow

1985 – 1986
 The Kerry Committee
 84 State Street

Boston, MA 02108
Database Manager

Summer 1984
John Leonard Associates
One Post Office Square
Boston, MA 02109
Temporary Secretary

Other Affiliations (uncompensated):

2012 – present
United States Court of Federal Claims Bar Association
Board of Governors
Ben Franklin Station, P.O. Box 7614
Washington, DC 20044

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I am not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Training and Professional Development Award, Civil Division, U.S. Department of Justice, for Legal Writing Team (2013)
Attorney General's John Marshall Award for Outstanding Legal Achievement in the Trial of Litigation (2010, 2007)
Perseverance Award, Civil Division, U.S. Department of Justice (2010)
Special Commendation, Civil Division, U.S. Department of Justice, for Outstanding Service on the Softwood Lumber Arbitration Team (2008)
Special Commendation, Civil Division, U.S. Department of Justice, for Outstanding Service (2006)
Special Commendation, Civil Division, U.S. Department of Justice, for Outstanding Contributions to the Government's Alternative Dispute Resolution Negotiations in the A-12 Litigation (2000)
Meritorious Civilian Service Award, Department of the Navy (2000)
Merit awards Civil Division, U.S. Department of Justice, for superior performance of duties (1998 – 2013)
Pi Sigma Alpha (1984)
Colby College's F. Harold Dubord Prize in Political Science (1984)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Advisory Rules Committee of the United States Court of International Trade (2004 – 2010)

American Bar Association

Boston Bar Association

Customs and International Trade Bar Association

Federal Circuit Bar Association

Chair, Subcommittee on Performance Issues and Contract Disputes, Federal Circuit Bar Association Study of Best Practices and Opportunities for Improvements in Federal Procurement Contracting conducted by Federal Circuit Bar Association Government Contracts Committee (2013 – present)

Massachusetts Bar Association

Planning Committees for the United States Court of International Trade Judicial Conference (2004, 2006)

United States Court of Federal Claims Bar Association

Member, Board of Governors (2012 – present)

Editor-in-Chief, *Inside 717* (2011 – 2013)

Women's Bar Association of Massachusetts

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Massachusetts, 1989

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the District of Nebraska, 2010

United States Court of International Trade, 2003

United States Court of Federal Claims, 1994

United States District Court for the District of Massachusetts, 1990

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Chevy Chase Elementary School Parent-Teachers' Association (2003 – 2007)
 Chevy Chase Recreational Association (2007 – 2013)
 Parents Association of Lab School (PALS) (2007 – present)
 Rosemary Hills Primary School Parent-Teachers' Association (2000 – 2005)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to 11a currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

As editor-in-chief of the Court of Federal Claims Bar Association's Inside 717 publication, I have been involved in editing the following volumes:

Inside 717, vol. 7, no. 2, April – June 2013. Copy supplied.

Inside 717 online update, issued May 18, 2013. Copy supplied.

Inside 717, vol. 7, no. 1, Jan. – March 2013. Copy supplied.

Inside 717, vol. 6, no. 4, Oct. – Dec. 2012. Copy supplied.

Inside 717, vol. 6, no. 3, July – Sept. 2012. Copy supplied.

Inside 717, vol. 6, no. 2, Apr. – June 2012. Copy supplied.

Inside 717, vol. 6, no. 1, Jan. – March 2012. Copy supplied.

Inside 717, vol. 5, no. 3, Oct. – Dec. 2011. Copy supplied.

Inside 717, vol. 5, no. 2, Apr. – Sept. 2011. Copy supplied.

With Emily S. Ullman, *Trade Adjustment Assistance Cases: 28 U.S.C. § 1581(d) – Department of Labor and Department of Agriculture Decisions Under the Trade Adjustment Assistance Statutes*, 39 Geo. J. Int'l L. 105 (2007). Copy supplied.

An Importer's Election: Whether to Invoke Attorney Advice in Defense or to Preserve Privilege, 39 J. Marshall L. Rev. 17 (2005). Copy supplied.

I wrote a book review for a student publication at some point during my attendance at Colby College. I do not have a copy of the book review and have been unable to locate one.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have served as a Governor of the United States Court of Federal Claims Bar Association since 2012, and I served as a member of the Advisory Rules Committee of the United States Court of International Trade between 2004 and 2010. Both organizations are comprised of members of the private and public bars. As an employee of the Department of Justice lacking authority to determine issues of policy in external organizations, I have not authored or been a signatory to any reports, memoranda, or policy statements by these organizations.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have not given any testimony, official statements, or other communications relating, in whole or in part, to matters of public policy or legal interpretation to public bodies or public officials.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

May 15, 2014: Panelist, Women in Government Contracts Law Forum, Wiley Rein LLP, Washington, DC. I spoke on a panel of women government contracts practitioners, from both the private and public bars, at an inaugural event attended by practitioners, law clerks, and law students. I have no notes, transcript, or recording. The address of Wiley Rein LLP is 1776 K Street, N.W., Washington, DC 20006.

June 21, 2013: Speaker, Town Hall Meeting of the Government Contracts Section of the Federal Circuit Bar Association, Federal Circuit Bench and Bar Conference, Colorado Springs, CO. I called in to present the status of the draft report of the Subcommittee on Performance Issues and Contract Disputes, Federal Circuit Bar Association Study of Best Practices and Opportunities for Improvements in Federal Procurement Contracting. PowerPoint prepared by study co-chair (including the subcommittee's slides) supplied.

April 18, 2013: Speaker, Working Session of the Federal Circuit Bar Association Study of Best Practices and Opportunities for Improvements in Federal Procurement Contracting, Washington, DC. I presented best practice areas and topics of the Subcommittee on Performance Issues and Contract Disputes. I have no notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 I Street, N.W., Suite 801, Washington, DC 20006.

March 21, 2013: Panelist, "Leading Trade Remedy Issues," Customs and International Trade Bar Association and the Federal Circuit Bar Association, New York, New York. I discussed new developments in jurisprudence concerning the scope of antidumping and countervailing duty orders. I have no notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 I Street, N.W., Suite 801, Washington, DC 20006.

February 28, 2013: Panelist, "Best Practices at the Court of Federal Claims," Federal Bar Association, Younger Lawyers Division, Washington, DC. I discussed best practices for practitioners who appear before the Court of Federal Claims. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, VA 22201.

January 25, 2013: Panelist, "Representing the Public as a Government Attorney," Cornell Law School Public Interest Law Career Symposium, Ithaca, New York. I discussed the unique responsibilities and opportunities afforded to attorneys who represent the United States in litigation. I have no notes, transcript, or recording. The address of Cornell Law School is Myron Taylor Hall, Ithaca, NY 14853.

October 16, 2012: Panelist, "Revisiting *Blue & Gold* and Other Timeliness Issues at the Court and at GAO," Bid Protest Committee of the ABA Public Contract Law Section Meeting, Washington, DC. I discussed new developments in jurisprudence concerning the circumstances in which a disappointed bidder may waive its ability to challenge a procurement decision. I have no notes, transcript, or recording. The ABA Public Contract Law Section has no physical address.

May 17, 2012: Panelist at the international trade breakout session of the United States Court of Appeals for the Federal Circuit Judicial Conference in Washington, DC. I discussed the judicial standards that apply to determining the scope of remand orders to the Court of International Trade and to administrative agencies. I have no notes, transcript, or recording. The address of the Federal Circuit is 717 Madison Place, N.W., Washington, DC 20005.

October 27, 2011: Panelist, "Ambiguity in the Law after Judicial Review," Court of International Trade Bench & Bar Conference, Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

February 26, 2010: Speaker at the Georgetown 2010 International Trade Update in Washington, DC. I spoke regarding enforcement of antidumping and countervailing duty collection. A copy of my unpublished paper on which my discussion was based and my PowerPoint are supplied.

April 17, 2009: Panelist, "Handling Import Violations in a New Enforcement Era," ABA Section of International Law 2009 Spring Meeting in Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

May 15, 2008: Panelist, "'Deemed Liquidation' Jurisprudence: Practical and Policy Issues Facing Courts and Parties," International Trade Breakout Session of the United States Court of Appeals for the Federal Circuit Judicial Conference, Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

March 1, 2007: Panelist at the 13th Annual Federal Procurement Institute, ABA Section of Public Contract Law, Annapolis, Maryland. A copy of my unpublished paper on which my discussion was based is supplied.

February 2, 2007: Panelist, "Customs: 19 U.S.C. § 1592 and the Duty of Reasonable Care," Georgetown 2007 International Trade Update, Washington,

DC. A copy of my unpublished paper on which my discussion was based is supplied.

May 19, 2006: Panelist, "Briefing and Oral Arguments in Complex Trade Cases: Do Current Procedures Give Parties Their Day in Court?," International Trade Breakout Session of the United States Court of Appeals for the Federal Circuit Judicial Conference, Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

April 2006: Panelist at the annual educational program sponsored by the Board of Contract Appeals Judges Association addressing "Key Case Review: Impact of Federal Circuit, Board and Court of Federal Claims Decisions on Government Contracts Law," Alexandria, Virginia. I discussed new Federal Circuit precedent concerning government contracts issues. I have no notes, transcript, or recording. The Judges Association has no physical address.

February 23, 2006: Panelist, "Litigating Trade Adjustment Assistance Cases Before the Court of International Trade," at an event sponsored by the Court of International Trade, the Customs and International Trade Bar Association, and the American Bar Association in Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

April 19, 2005: Panelist, "Litigating Trade Adjustment Assistance Cases Before the Court of International Trade," at an event sponsored by the Court of International Trade, the Customs and International Trade Bar Association, and the American Bar Association in New York, NY. A copy of my unpublished paper on which my discussion was based is supplied.

March 2, 2005: Panelist, "Trade and Customs Law: Introduction and Refresher," Georgetown 2005 International Trade Update, Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

March 1, 2005: Panelist, "Appeals of Customs and Trade Cases at the Federal Circuit: Perspectives of the Bench, Government, and Private Bar," at an event sponsored by the Customs and International Trade Bar Association and the Federal Circuit Bar Association in Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

November 8, 2004: Panelist at the customs breakout session at the Court of International Trade 13th Judicial Conference held in New York, NY. A copy of my unpublished paper on which my discussion was based is supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

None.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

- i. Of these, approximately what percent were:

jury trials:	_____ %
bench trials:	_____ % [total 100%]
civil proceedings:	_____ %
criminal proceedings:	_____ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held any judicial office.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have held no public offices. I have never been a candidate for elective office or a nominee to any appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

From early 1985 through the summer of 1986, I was paid to help manage the donor database for The Kerry Committee, the election committee for then-United States Senator John Kerry, which was based in Boston, Massachusetts. My work for The Kerry Committee ended when I moved to Ithaca, New York to attend law school. In 1984, I volunteered for the Jim Shannon for U.S. Senate primary campaign in Boston, Massachusetts. I coordinated other volunteers and participated in volunteer activities, including driving surrogates to events. I performed similar activities later that year for the John Kerry for U.S. Senate general election campaign, also in Boston, Massachusetts. I held no title on either campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
 - ii. whether you practiced alone, and if so, the addresses and dates;
 - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1989 – 1994
 Bingham, Dana & Gould (now Bingham McCutchen)
 150 Federal Street
 Boston, MA 02110
 Associate

June 1994
 Plymouth County District Attorney's Office
 Fourth District Court of Plymouth County
 2200 Cranberry Highway
 West Wareham, MA 02576
 Special Assistant District Attorney (while at Bingham, Dana & Gould)

1994 – present
 United States Department of Justice
 Civil Division

Commercial Litigation Branch
Ben Franklin Station, P.O. Box 480
Washington, DC 20044
Trial Attorney (1994 – 2001)
Senior Trial Counsel (2001 – 2003)
Assistant Director (2003 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

During my five years in private practice at Bingham, Dana & Gould (now Bingham McCutchen), I worked primarily on federal and state court litigation arising from disputes involving commercial banking, bankruptcy, products liability, franchises, closely-held corporations, and patent infringement.

From 1994 to 2001, I served as a Trial Attorney in the Commercial Litigation Branch of the Civil Division in the Department of Justice. My practice consisted of work before the Court of Federal Claims and the Court of Appeals for the Federal Circuit. Although I handled some appeals before the Federal Circuit, the vast majority of my time was devoted to a single case, the A-12 litigation, which concerned two contractors' challenge to the Navy's termination of their \$4.8 billion contract for default. As a member of the trial team, I developed various legal issues on the case, took and defended numerous depositions, worked with damages experts, and developed the government's position paper submitted in a mediation with former Secretary of State Warren Christopher held in 1999. After the case did not settle at that time, I played a key role in the six-week merits trial, which took place in 2001. Among the numerous witnesses for whom I was responsible were the Navy program manager, the contracting officer, and the chief engineer. I also cross-examined the contractors' chief executive officers and other senior executives. The court sustained the default termination in a 2001 decision that was later vacated on appeal.

From 2001 to 2003, I served as a Senior Trial Counsel in the Commercial Litigation Branch. I continued to devote substantial time to the

contractors' appeal of the A-12 judgment, but I also handled more of my own cases individually, both at the trial and the appellate levels. These cases involved oil and gas leases, suits by telecommunications companies, and appeals to the Federal Circuit involving federal personnel law.

Since 2003, I have served as an Assistant Director in the Commercial Litigation Branch. As a supervisory attorney, I have spent the majority of my time over the next six or seven years supervising our office's international trade group, which practices before the Court of International Trade and the Federal Circuit. In this capacity, I consult with the assigned trial attorneys, providing guidance and support in how to approach their cases and making suggestions about litigation strategy. I personally review all of the trial attorneys' written work, and I mentor attorneys to ensure their sound professional development. I also have assumed responsibility for the international trade moot court program, ensuring that all attorneys presenting argument in trade cases participated in at least one moot court, and personally judging most of these moots.

Since 2010, I have continued to supervise attorneys in the international trade group, but I also have assumed more supervisory responsibility for government contract cases. Among other things, I have co-managed our office's bid protest team. Their expertise ensures that we provide consistent representation to our client agencies, and the team also provides an important resource for other attorneys in the office handling the heavy bid protest docket. I also now devote substantial time to advising and counseling other attorneys, from the Department of Justice and from other federal agencies.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

While I was at Bingham Dana & Gould, my billable clients were commercial banks, manufacturers, engineering firms, shareholders in closely-held corporations, large law firms, franchisees, and biotech companies, among others. My *pro bono* clients were a death-row inmate, home buyers, and firefighters.

During the past 20 years as an attorney for the Department of Justice, my client has been the United States. I have specialized in the areas of government contracts and international trade since joining the Department of Justice in 1994.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Overall, 95% of my practice has been in litigation. The nature of my litigation practice changed dramatically when I moved from private practice to government service in 1994. When I was at Bingham, Dana & Gould, approximately 50% of my practice was in Massachusetts Superior Court, with the remainder in federal district and bankruptcy courts, as well as in commercial arbitration. I also had some criminal practice in my pro bono work and in a month-long rotation in the Plymouth County District Attorney's Office. As a junior to mid-level associate at a large firm, I primarily appeared in court in a second-chair capacity on dispositive matters, and I also appeared frequently in Massachusetts Superior Court and federal bankruptcy courts to present argument on procedural motions. In addition, I tried two small contract cases in Massachusetts district court as sole counsel. Since joining the Department of Justice in 1994, all of my cases have been civil cases in federal courts, although within the last few years I have had three civil cases in the LCIA (formerly London Court of International Arbitration). Since joining the Department of Justice, I have appeared frequently in court. The following indicates a rough aggregate of my practice throughout my career:

- i. Indicate the percentage of your practice in:
 1. federal courts: 88%
 2. state courts of record: 10%
 3. other courts: 2%
 4. administrative agencies: 0%
- ii. Indicate the percentage of your practice in:
 1. civil proceedings: 99%
 2. criminal proceedings: 1%
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While I was at Bingham, Dana & Gould, to the best of my recollection, I was sole counsel on two small contract cases that proceeded to judgment following bench trials in Massachusetts state district court. I also was associate counsel on one large bench trial that proceeded to judgment in Massachusetts Superior Court; two jury trials that proceeded to verdicts in federal district court in Massachusetts; a design patent bench trial that proceeded to judgment issued by a United States magistrate judge; and two trials in adversary proceedings in federal bankruptcy court. In addition, while still in private practice, I participated in a month-long rotation at the Plymouth County District Attorney's office in Massachusetts. During that rotation, I prosecuted as sole counsel six misdemeanor jury trials to verdicts in Massachusetts state district court.

Since joining the Department of Justice nearly 20 years ago, I have tried to

judgment, as part of different teams, several cases in the Court of Federal Claims and the LCIA. I also have been the supervisory attorney for dozens of trials. None of the cases were jury trials. For those matters, I reviewed all filings and provided substantial advice regarding trial strategy. The following indicates an estimate of my practice throughout my career:

- i. What percentage of these trials were:
 - 1. jury: 5%
 - 2. non-jury: 95%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

Although I was not counsel of record, I have participated in writing the following briefs:

Agredano v. United States, No. 10-99, *cert. denied*, 131 S. Ct. 994 (2011) (brief in opposition, available at 2010 WL 4959746)

General Dynamics Corporation v. United States, Nos. 09-1298, 09-1302, 131 S. Ct. 1900 (2011) (brief in opposition to petition for writ of certiorari, available at 2010 WL 3300134; brief for the United States, available at 2010 WL 5099376)

United States v. Eurodif, S.A., Nos. 07-1059, 07-1078, 555 U.S. 309 (2009) (petition for writ of certiorari, available at 2008 WL 437010; reply brief, available at 2008 WL 905193; brief for the United States, available at 2008 WL 2794014; reply brief, available at 2008 WL 4650592)

NTN Corporation v. United States, No. 07-449, *cert. denied*, 552 U.S. 1165 (2008) (brief in opposition, available at 2007 WL 4613635)

JTEKT Corporation v. United States, No. 06-1632, *cert. denied*, 552 U.S. 1007 (2007) (brief in opposition, available at 2007 WL 2781068)

Corus Staal B.V. v. United States, No. 06-1057, *cert. denied*, 551 U.S. 1144 (2007) (brief in opposition, available at 2007 WL 1552212)

Timken U.S. Corporation v. United States, No. 06-44, *cert. denied*, 549 U.S. 1030 (2006) (brief in opposition, available at 2006 WL 2944534)

Folden v. United States, No. 04-1106, *cert. denied*, 545 U.S. 1127 (2005) (brief in opposition, available at 2005 WL 1240077)

United Technologies Corporation v. Rumsfeld, No. 03-128, *cert. denied*, 540 U.S. 1012 (2003) (brief in opposition, available at 2003 WL 22429187)

Duren v. Alabama, No. 91-7300, *cert. denied*, 503 U.S. 974 (1992) (petition for writ of certiorari is unavailable on Westlaw, and I have been unable to locate a hard copy).

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. The A-12 Litigation

In 1991, two large defense contractors working jointly to develop the A-12, a carrier-based stealth aircraft for the Navy, brought suit in the Court of Federal Claims after the government terminated their \$4.8 billion contract for default and demanded repayment of \$1.35 billion in progress payments for work the government never accepted. The contractors sought to retain the payments and obtain an additional \$1.2 billion in unreimbursed performance costs. In 2011, after five trials and three appeals over 20 years of litigation, much of it classified, the United States Supreme Court vacated the judgment sustaining the default termination. Disagreeing with the lower courts' treatment of the effect of the state secrets privilege, the Court remanded the case for resolution of certain issues. *See Gen'l Dynamics Corp. v. United States*, 131 S. Ct. 1900 (2011). In July 2013, the parties reached a settlement that was contingent on legislative authorization, which ultimately occurred in December 2013. This 22-year litigation established important precedent regarding the legal standards for default terminations, especially for failure to make progress, and also for the effect of an agency's invocation of the state secrets privilege in a government contracts setting.

Because the case settled only recently, I worked on this litigation nearly the entire time that I have been with the Department of Justice. Although I was not the counsel of record, I played a key role in developing the government's strategy and personally. deposed, defended, and examined or cross-examined at trial the principal witnesses in the case. In addition, I provided extensive support to the Solicitor General's office during the Supreme Court litigation. I had a continuing role as a principal author of all Court of Federal Claims, Federal Circuit, and alternative dispute resolution briefing in or after

1999. *E.g.*, *McDonnell Douglas Corp. v. United States*, 567 F.3d 1340 (Fed. Cir. 2009) (before Chief Judge Michel, and Judges Moore and Huff); *McDonnell Douglas Corp. v. United States*, 323 F.3d 1006 (Fed. Cir. 2003) (before Judges Michel, Clevenger, and Linn); *McDonnell Douglas Corp. v. United States*, 182 F.3d 1319 (Fed. Cir. 1999) (before Chief Judge Mayer, and Judges Michel and Clevenger); *McDonnell Douglas Corp. v. United States*, 76 Fed. Cl. 385 (2007) (before Judge Hodges); *McDonnell Douglas Corp. v. United States*, 50 Fed. Cl. 311 (2001) (before Judge Hodges); *McDonnell Douglas Corp. v. United States*, 35 Fed. Cl. 358 (1996) (before Judge Hodges).

The government's counsel of record was Bryant G. Snee, Deputy Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Ben Franklin Station, P.O. Box 480, Washington, DC 20044 (202.616.0315). Primary opposing counsel for General Dynamics Corporation was David Churchill, Jenner & Block, 1099 New York Avenue, N.W., Suite 900, Washington, DC 20001-4412 (202.639.6056). Primary opposing counsel for The Boeing Company (successor to McDonnell Douglas Corporation) were Charles J. Cooper and Michael W. Kirk, Cooper & Kirk, 1523 New Hampshire Avenue, N.W., Washington, DC 20036 (202.220.9671).

2. *Rumsfeld v. United Technologies Corporation*, 315 F.3d 1361 (Fed. Cir.) (before Judges Newman, Lourie, and Dyk), *cert. denied*, 540 U.S. 1012 (2003).

In this appeal concerning Cost Accounting Standards (CAS) regulations, a defense contractor contended that the payments it made to foreign suppliers to acquire parts under "collaboration agreements" were not "costs" for purposes of calculating overhead costs to be allocated between its government and commercial contracts under the CAS. By not treating these payments as costs, the defense contractor sought to allocate more of its overhead expenses to its government contracts, resulting in additional costs to be borne by the government exceeding \$250 million. The Armed Services Board of Contract Appeals agreed with the contractor, relying in part on expert testimony regarding the meaning of the CAS. On appeal, the Federal Circuit overturned the board's decision. First, the Federal Circuit ruled that a court or board may neither receive nor consider expert testimony regarding interpretive issues such as the proper meaning of regulations. Second, the Federal Circuit emphasized its reliance on dictionary meanings for undefined terms such as "costs." Third, the court clarified that evidence of affirmative misconduct is necessary to invoke equitable estoppel against the government in a government contracts setting. I personally handled, as counsel of record, the government's appeal to the Federal Circuit.

Opposing counsel was Kent R. Morrison, Crowell & Moring LLP, 1001 Pennsylvania Avenue, N.W., Washington, DC 20004-2595 (202.624.2610).

3. *Folden v. United States*, 379 F.3d 1344 (Fed. Cir. 2004) (before Judges Schall, Gajarsa, and Prost), *cert. denied*, 545 U.S. 1127 (2005); *Folden v. United States*, 56 Fed. Cl. 43 (2003) (before Judge Horn).

Disappointed applicants for seven cellular licenses filed a \$145 million suit in the Court

of Federal Claims alleging that the Federal Communications Commission (FCC) had breached implied-in-fact contracts to award the licenses by lottery and had violated their constitutional rights by taking their contractual rights without compensation. After the initial lottery winners proved to be unqualified to receive licenses, the FCC announced it would conduct relotteries. Before the FCC conducted the relotteries, however, Congress acted to require the FCC to institute new rules to award licenses by auction. The FCC then issued an order rejecting the applicants' license applications. Rather than appealing the FCC's order, the applicants instead filed a suit for money damages directly in the Court of Federal Claims, asserting contract and takings theories. Both the trial and appellate courts recognized Congress's intent that the D.C. Circuit be the exclusive forum for challenges to FCC license decisions and ruled that dismissal was proper. I personally handled the litigation at both the trial and appellate levels as counsel of record for the government.

Opposing counsel was Russell D. Lukas, Lukas, Nace, Gutierrez & Sachs, LLP, 8300 Greensboro Drive, Suite 1200, McLean, VA 22102 (703.584.8678).

4. *Cellco Partnership d/b/a Verizon Wireless v. United States*, 54 Fed. Cl. 260 (2002) (before Judge Wilson).

In 2001, Verizon Wireless successfully bid \$8.69 billion for reaucted wireless spectrum licenses and deposited approximately \$1.7 billion with the FCC. The FCC had originally awarded the licenses to two other carriers that had experienced difficulty raising the capital necessary to make the license installment payments. The FCC ruled that the licenses were automatically cancelled and reaucted them, resulting in litigation in the D.C. Circuit. After the D.C. Circuit issued a ruling requiring the FCC to return the licenses to the original carriers, the FCC ordered partial refunds to the bidders on the reaucted licenses and requested public comment regarding their proper disposition. Verizon Wireless, a bidder, filed suit in the Court of Federal Claims seeking money damages, alleging that the FCC had created a contract when it accepted Verizon Wireless's high bid and later materially breached the contract by failing to timely deliver the reaucted licenses. After Verizon Wireless filed a motion for summary judgment, the government immediately sought to stay the Court of Federal Claims litigation, asserting that the various related proceedings in other courts, including the D.C. Circuit, had created a risk of inconsistent results. After the court denied the government's motion for stay, the parties settled out of court. As counsel of record for the government, I personally handled the litigation and settlement negotiations with Verizon Wireless and numerous other bidders with potential claims against the government.

Opposing counsel was William T. Lake, currently Bureau Chief, Office of the Bureau Chief, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554 (202.418.7200).

5. *Amber Resources Company v. United States*, 538 F.3d 1358 (Fed. Cir. 2008) (before Judges Lourie, Bryson, and Gajarsa); *Amber Resources Company v. United States*, 73 Fed. Cl. 738 (2006) (before Judge Bruggink); *Amber Resources Company v.*

United States, 68 Fed. Cl. 535 (2005) (before Judge Bruggink).

Oil and gas companies holding 40 offshore leases in California brought suit in the Court of Federal Claims seeking over \$2 billion in damages following a federal district court decision (later affirmed) holding that certain amendments to the Coastal Zone Management Act enacted by Congress had imposed additional, unbargained-for procedures on lessees seeking lease suspensions from the Department of the Interior. Relying on *Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604 (2000), the lessees argued that the change in law had materially breached their leases by increasing the risk associated with their successful development and production. The Court of Federal Claims agreed that the change in law was a repudiation of the leases, but it rejected the lessees' claims that they were entitled to collect both restitution and reliance damages for the breach. Requiring the lessees to make an election, the court granted the lessees rescission of their leases and ordered the government to return the \$1 billion paid for 35 of the leases. The court rejected the lessees' claim for an additional \$727 million in sunk costs. The Federal Circuit rejected both cross-appeals and affirmed the court's judgment. The government later successfully reduced its liability for the remaining five leases. I was counsel of record for the government at both the trial and appellate stages.

Opposing counsel was Steven J. Rosenbaum, Covington & Burling LLP, 1201 Pennsylvania Avenue, N.W., Washington, DC 20004-2401 (202.662.5568).

6. *AINS, Inc. v. United States*, 365 F.3d 1333 (Fed. Cir. 2004) (before Judges Bryson, Gajarsa, and Prost); *AINS, Inc. v. United States*, 56 Fed. Cl. 522 (2003) (before Judge Block).

AINS, a contractor providing information technology services to the United States Mint, brought suit in the Court of Federal Claims alleging a breach of contract. Because judgments of the Court of Federal Claims are paid out of appropriated funds, the government filed a motion to dismiss the case for lack of jurisdiction, contending that the Mint had become a non-appropriated funds instrumentality, otherwise known as "NAFI," in 1995 when Congress created the Mint's public enterprise fund, and that the United States had not waived its sovereign immunity for suits based on contracts with NAIs. Both the Court of Federal Claims and the Federal Circuit agreed that the Mint was no longer receiving appropriated funds and that the Court of Federal Claims therefore lacked jurisdiction to entertain AINS's claim and enter a money judgment that would be paid out of appropriated funds. This case set the NAFI doctrine and the criteria for determining whether a governmental entity is a NAFI until that doctrine was subsequently set aside in another case in 2011. I personally handled the *AINS* litigation at the trial stage as counsel of record for the government, and I presented the government's oral argument at the Federal Circuit.

Opposing counsel was Craig A. Holman, Arnold & Porter LLP, 555 12th Street, N.W., Washington, DC 20004-1206 (202.942.5722).

7. *Agredano v. United States*, 595 F.3d 1278 (Fed. Cir. 2010) (before Judges Mayer, Clevenger, and Dyk), *cert. denied*, 131 S. Ct. 994 (2011).

This is a case in which a Mexican national purchased a car at a U.S. Customs and Border Protection forfeiture auction held just over the border in San Diego, drove the car back home to Mexico, and later was imprisoned for more than a year after Mexican authorities discovered concealed marijuana during a routine traffic stop. Mr. Agredano initially brought suit in federal district court under the Federal Tort Claims Act, but that suit was later dismissed after the Supreme Court issued *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), holding that a statutory exception bars all claims based on an injury suffered on foreign soil. Mr. Agredano then brought a breach of contract claim in the Court of Federal Claims, contending the sale agreement, which contained an “as is” clause, nonetheless contained an implied-in-fact warranty that the car was free of contraband, and that Customs had breached this warranty by not following its procedures adequately to ensure that all contraband was removed. After trial, the court found that there was an implied warranty and awarded Mr. Agredano damages. The Federal Circuit reversed, holding that Customs’ regulatory obligations to inspect forfeited cars for contraband were not part of the contract, and that in any event the express terms of the sale agreement disclaiming any warranty precluded the court from finding a contrary implied-in-fact obligation. I personally handled the government’s appeal as counsel of record and was the supervisory attorney for the case when it was before the Court of Federal Claims.

Opposing counsel was Teresa Trucchi, Suppa, Trucchi, & Henein LLP, 3055 India Street, San Diego, CA 92103 (619.297.7330).

8. *United States v. Canada*, LCIA No. 111790 (July 26, 2012) (before Messrs. Sachs, van den Berg, and Veeder); *United States of America v. Canada*, LCIA No. 91312 (Sept. 28, 2009) (before Messrs. Böckstiegel, Hanotiau, and Veeder); *United States of America v. Canada*, LCIA No. 7941 (Feb. 23, 2009) (before Messrs. Böckstiegel, Hanotiau, and Veeder).

In a series of state-to-state arbitrations brought for the first time in the LCIA (formerly London Court of International Arbitration), the United States has sought to enforce its rights under the 2006 Softwood Lumber Agreement (SLA) between the United States and Canada. The United States agreed to forgo trade remedies available under domestic law in exchange for Canada’s agreement to regulate exports of softwood lumber to the United States and to maintain a more market-based system under which provincial and national governments sell timber from public lands to Canadian sawmills. In the first arbitration, No. 7941, the tribunal found that Canada had breached the SLA by failing to apply certain charges, and it awarded the United States CDN \$68.26 million in additional charges as compensation. Later, Canada initiated a follow-on arbitration, No. 91312, in which it claimed that it had cured its breach by offering the United States a lump sum payment of USD \$34 million. The tribunal agreed with the United States’ position that Canada’s USD \$34 million settlement offer failed to wipe out the consequences of the breach identified by the tribunal. In the most recent arbitration, No. 111790, the United States contended that Canada had breached the SLA by selling logs to its domestic industry for

a flat minimum price instead of a higher variable price dictated by the system grandfathered by the SLA. After a two-week hearing, the tribunal ruled that the United States had not presented sufficient direct evidence of a breach. I was counsel of record for the United States in all three arbitrations, working with a large team in each case.

Canada's counsel of record in Nos. 7941 and 91312 was Guillermo Aguilar-Alvarez, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (212.556.2145). Canada's counsel of record in No. 111790 was John M. Townsend, Hughes, Hubbard & Reed, LLP, 1775 I Street, N.W., Washington, DC 20006-2401 (202.721.4640). Joanne E. Osendarp, Hughes, Hubbard & Reed, LLP, 1775 I Street, N.W., Washington, DC 20006-2401 (202.721.4740), served as counsel to Canada in all three of the arbitrations in which I was involved.

9. *Michael Simon Design, Inc. v. United States*, 609 F.3d 1335 (Fed. Cir. 2010) (before Judges Bryson, Gajarsa, and Moore); *Michael Simon Design, Inc. v. United States*, 637 F. Supp. 2d 1218 (Ct. Int'l Trade 2009) (before Judge Barzilay).

Three importers of foreign-made goods brought actions in the Court of International Trade under the Administrative Procedure Act (APA), challenging certain modifications to the United States tariff schedule made by a Presidential proclamation following recommendations by the International Trade Commission. The government filed a motion to dismiss because the Commission's recommendations did not constitute final agency action that would be reviewable under the APA, and the President's act of adopting the Commission's recommendation is not subject to judicial review. The Court of International Trade granted the government's motion, and the Federal Circuit affirmed the judgment of dismissal. I personally handled the case at both the trial and appellate levels as counsel of record for the government.

Opposing counsel was Alan Goggins, Barnes, Richardson & Coburn, 475 Park Avenue South, 25th Floor, New York, NY 10016 (212.725.0200).

10. *PAM, S.p.A. v. United States*, 463 F.3d 1345 (Fed. Cir. 2006) (before Chief Judge Michel, and Judges Friedman and Mayer).

In an international trade case about the government's discretion to relax procedural requirements, the Court of International Trade had held that the Department of Commerce's completed administrative review of dumping by PAM, a foreign pasta producer, was void *ab initio* because the domestic industry had failed to serve PAM with its request to Commerce for the review, as required by Commerce's regulations. The Court of International Trade emphasized that the government is required to follow its own regulations and held that the agency should not have continued with the administrative review given the procedural violation. The government appealed the Court of International Trade's judgment as inconsistent with Supreme Court and Federal Circuit precedent allowing for the relaxation of procedural requirements absent a showing of substantial prejudice. The Federal Circuit reversed the judgment, clarifying

the correct standard and upholding the government's discretion. I personally handled the government's appeal as counsel of record.

Opposing counsel was David L. Simon, 1025 Connecticut Avenue, N.W., Suite 1000, Washington, DC 20036 (202.481.9000).

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Apart from my litigation practice, I regularly review proposed legislation and regulations, as well as proposed changes in court rules. I also provide advice in a number of subject matter areas, most notably government contracts and international trade law, and jurisdictional issues regarding the federal courts. I also provided extensive internal training for attorneys on a range of issues, including legal writing, international trade, and appellate advocacy.

In addition, I have served in a number of capacities in various bar associations. For example, as a Governor of the United States Court of Federal Claims Bar Association, I have worked to find common ground between members of the private and public bars on practical issues, such as the efficient handling of confidential information subject to judicial protective orders. I also have reviewed submissions for the Bar Association's scholarship and writing contest programs.

I have never performed any lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

None.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not have any arrangements for deferred income or future benefits from previous business relationships.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If confirmed, I have no plans, commitments, or agreements to pursue outside employment.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am unaware of any individuals, family or otherwise, who are likely to present potential conflicts of interest. As a supervisory attorney at the Department of Justice, I am currently responsible for a large number of cases currently pending before the Court of Federal Claims. If confirmed, I would recuse myself from all cases in which I was either directly or indirectly involved during my tenure at the Department of Justice. For matters handled by the Department of Justice after my departure, I would apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine whether to recuse myself in other matters.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would consult rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, and based on that consultation, I would compile a comprehensive list of matters for easy flagging of potential conflicts of interest. In close cases, I would consult

other judges and any individuals designated by the court or judicial organizations to provide advice on these types of questions as they arise.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a federal employee for the last 20 years, I have been restricted in my ability to provide pro bono legal advice. While an associate at Bingham, Dana & Gould, I worked on a number of pro bono cases. From 1989 to 1994, I worked with attorneys at Bingham, Dana & Gould on the direct appeals and preparation for the subsequent habeas petition for David Ray Duren of Alabama. I also worked on a number of pro bono matters in coordination with the Lawyers Committee for Civil Rights Under the Law and the Boston Bar Association, including a housing discrimination case, *Foster v. Mydas Associates*, 943 F.2d 139 (1st Cir. 1991), for which I prepared the jury instructions and assisted in the appellate briefing.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In early 2013, I provided my resume and expression of interest to the Director of the Commercial Litigation Branch in the Civil Division of the Department of Justice, and she forwarded this information to the Office of Legal Policy at the Department of Justice. Since May 3, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. Since August 30, 2013, I have been in contact with officials from the White House Counsel's Office. On November 6, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 21, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or

implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) McCarthy, Patricia M.	2. Court or Organization United States Court of Federal Claims	3. Date of Report 05/21/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Judge, active	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 05/21/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final Sb. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2013 to 05/07/2014
7. Chambers or Office Address United States Department of Justice, Civil Division, Commercial Litigation Branch P.O. Box 480 Ben Franklin Station Washington, DC 20044		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Member, Board of Governors	United States Court of Federal Claims Bar Association
2.	
3.	
4.	
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
McCarthy, Patricia M.	05/21/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☒ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1.		
2.		
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.
(Dollar amount not required except for honoraria.)*☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2014	self-employed public strategies consultant
2. 2013	self-employed public strategies consultant
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. EXEMPT				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
 Page 3 of 6

Name of Person Reporting McCarthy, Patricia M.	Date of Report 05/21/2014
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V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	The Lab School of Washington	Tuition agreements	L
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
McCarthy, Patricia M.	05/21/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Bank of America cash accounts	A	Interest	K	T	Exempt				
2. Bank of America (IRA) (CD)	A	Interest	K	T					
3. Vanguard Dividend Growth Inv.	A	Interest	J	T					
4. T. Rowe Price Stable Value Fund Sch A	A	Interest	J	T					
5. American Funds Money Market R2 (RABXX)	A	Interest	K	T					
6. AT&T Stock	A	Dividend	J	T					
7. Verizon Communications Inc. Stock	A	Dividend	J	T					
8. Frontier Communications Stock	A	Dividend	J	T					
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
McCarthy, Patricia M.	05/21/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
McCarthy, Patricia M.	05/21/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Patricia M. McCarthy*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		23	084	Notes payable to banks-secured (auto)		29	766
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		31	120	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		8	703
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		851	672
Real estate owned – personal residence	1	001	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		34	000	Tuition agreements		54	028
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		652	239				
IRA (cash)		15	083				
				Total liabilities		944	169
				Net Worth		812	357
Total Assets	1	756	526	Total liabilities and net worth	1	756	526
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

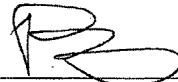
FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>Listed Securities</u>		
American Funds Money Market Fund	\$ 18,366	
AT&T stock	357	
Frontier Communications stock	18	
T. Rowe Price Stable Value Fund	5,958	
Vanguard Dividend Growth Fund	4,715	
Verizon Communications stock	1,706	
Total Listed Securities	\$ 31,120	

AFFIDAVIT

I, Patricia M. McCarthy, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 22, 2014
(DATE)


(NAME)

Natalie Palmer
(NOTARY) 5/22/14

NATALIE R. PALMER
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 30, 2015

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Jeri Kaylene Somers; Jeri Kaylene Thiede-Somers
2. **Position:** State the position for which you have been nominated.

Judge, United States Court of Federal Claims
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Civilian Board of Contract Appeals
1800 M Street, NW, Suite 600
Washington, D.C. 20036

Residence: Arlington, VA
4. **Birthplace:** State year and place of birth.

1961; Wichita, Kansas
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1983 – 1986, American University Washington College of Law; J.D., 1986
1980 – 1983, George Mason University; B.A., 1983
1979 – 1980, College of William and Mary; no degree received
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2007 – present
United States Civilian Board of Contract Appeals
1800 M Street, NW, Suite 600

Washington, D.C. 20036
Vice Chair (2008 – present)
Board Judge (2007 – 2008)

June 2013 – December 2013
(from my private residence)
Private Mediator/Arbitrator (independent contractor)

2008 – Present
George Washington University School of Law
2000 H Street, NW
Washington, D.C. 20052
Professorial Lecturer in Law

1986 – 2007
United States Air Force
The Judge Advocate General's Corps
Pentagon, Washington, D.C.
(At various locations throughout service)
Military Judge (2004 – 2007)
Reserve Judge Advocate (1991 – 2007)
Active duty Judge Advocate (1986 – 1991)

2003 – 2007
United States Department of Transportation Board of Contract Appeals
400 7th Street, NW
Washington, D.C. 20590
Administrative Judge

2001 – 2003
Miller & Chevalier Chartered
655 15th Street NW, Suite 900
Washington, D.C. 20004
Counsel

1994 – 2001
Office of the United States Attorney, Eastern District of Virginia, Alexandria Division
2100 Jamieson Avenue
Alexandria, VA 22314
Assistant United States Attorney

1994 – 2001
University of Maryland, University College Long Distance Learning
3501 University Boulevard East
Adelphi, MD 20783
Adjunct Professor

1991 – 1994
 United States Department of Justice
 Commercial Litigation Branch, Civil Division
 PO Box 480, Ben Franklin Station
 Washington, D.C. 20044
 Trial Attorney

Other Affiliations (uncompensated):

2012 – present
 Capital Girls Lacrosse Club
 (no physical address)
 Board member

2012 – present
 Yorktown High School Girls Lacrosse Booster Club
 (from my private residence)
 President and Treasurer

2010 – 2012
 Borromeo House (BHI)
 Borromeo Housing, Inc.
 3304 Washington Blvd.
 Arlington, VA 22201
 Board member

2005 – 2006
 The American Inns of Court, George Mason Chapter
 George Mason Law School
 3301 N. Fairfax Drive
 Arlington, VA 22201
 President

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

2004 – 2007
 United States Air Force Reserves
 Lieutenant Colonel
 Honorable Discharge (Retired)

1996 – 2004
 D.C. Air National Guard

Lieutenant Colonel
Honorable Discharge

1993 – 1996
D.C. Army National Guard
Captain
Honorable Discharge

1991 – 1993
United States Air Force Reserves
Captain
Honorable Discharge

1986 – 1991
United States Air Force
Captain
Honorable Discharge

I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

District of Columbia Minuteman Award (2004)

District of Columbia National Guard Community Service Ribbon for participation in International Monetary Fund Service (2000)

Certificate of Appreciation, U.S. Department of State, Office of the Inspector General (2000)

Certificate of Appreciation, U.S. Patent and Trademark Office (2000)

Air Force Meritorious Service Medal (1999)

Sustained Superior Performance Award, U.S. Attorney's Office (1999)

Certificate of Recognition for military service during the Cold War (Air Force) (1998)

United States Attorneys' Commendation (July 1997)

Letter of Appreciation: *Mathis v. Perry* (awarded by the Defense Contract Audit Agency) (1996)

Letter of Appreciation: *Williams v. Dalton* (awarded by the Department of the Navy) (1995)

Letter of Commendation: *Alcan Electrical & Engineering Co. v. United States* (awarded by the Department of the Army) (1992)

National Defense Service Medal (1991)

Air Force Commendation Medal (Second Oak Leaf Cluster) (1991)

Air Force Longevity Service Award Ribbon (1990)

Air Force Overseas Long Tour Ribbon (1990)

Air Force Outstanding Unit Awards (multiple) (1990 – 1999)

Air Force Commendation Medal (First Oak Leaf Cluster) (1990)

Air Force Commendation Medal (1988)

Small Arms Expert Marksmanship Ribbon (1987)

Air Force Training Ribbon (1986)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Commission on Racial and Ethnic Diversity in the Profession

Section Liaison (2002 – 2012)

Judiciary Division, National Conference of Administrative Law Judiciary

Executive Committee Member (2011)

Public Contract Law Section

Annual and Quarterly Program, Co-Chair (2006 – 2007)

Budget Officer (2012 – 2014)

Contract Claims and Disputes Committee

Co-Chair (2003 – 2006)

Vice Chair (2006 – present)

Council, Elected Member (2005 – 2008)

Federal Procurement Institute, Co-Chair (2011)

General Interest Division, Co-Chair (2011 – 2012)

Membership, Diversity and Outreach, Vice-Chair (2002 – 2011)

Nominating Committee (2008)

Procurement Fraud Committee, Vice-Chair (2002 – 2004)

Public Contract Law Education Project (2006 – 2007)

Public Contract Law Journal
Associate Editor (Submissions) (2003 – present)

American Inns of Court, George Mason Chapter
President (2005 – 2006)

Asian Pacific American Bar Association

Board of Contract Appeals Bar Association
Board of Governors (2003 – 2005)

Board of Contract Appeals Judges Association

Federal Bar Association
Conference Planning Committee, 2003 Annual Conference

Judge Advocates Association

National Association of Women Judges

Northern Virginia Black Attorneys Association

Virginia Bar Association
Special Issues Committee

Virginia State Bar
Disciplinary Committee
Chair (1998 – 2003)
Professionalism Committee
Chair (2005 – 2006)
Professionalism for Law Students
Special Committee on Access to Legal Services

Women's Bar Association
Judicial Endorsements Committee
Co-Chair (2002 – 2003)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Virginia, 1986
District of Columbia, 1989

There have been no lapses in membership, although I converted to judicial status in 2003, upon appointment to the position of administrative judge.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1999
 United States Court of Appeals for the Fourth Circuit, 1994
 United States Court of Appeals for the Federal Circuit, 1991
 United States Court of Military Appeals, 1986
 United States District Court for the District of Maryland, 2001
 United States District Court for the Eastern District of Virginia, 2000
 United States Court of Federal Claims, 1991

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Army Navy Country Club, member (2006 – present)
 Borromeo Housing, Inc. (2010 – 2012)
 Board member
 Capital Girls Lacrosse Club (2012 – present)
 Board member
 U.S. Lacrosse, certified U.S. Lacrosse Official (2013 – present)
 Yorktown High School Girls Lacrosse Booster club (2012 – present)
 President and Treasurer

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently

discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Foreword: The Boards of Contract Appeals: A Historical Perspective, 60 Am. U. L. Rev. 745 (2011). Copy supplied.

From JAG to Judge, "Voices" column, Perspectives Magazine, quarterly magazine of the American Bar Associations Commission on Women in the Profession, Spring 2008. Copy supplied.

Since 2003, I have been an Associate Editor for the Public Contract Law Journal for the American Bar Association. I generally serve as a submissions editor, which involves reviewing pieces submitted for possible publication while the law student members of the journal provide substantive edits to pieces that are selected for publication.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have served as a Council Member for the Public Contract Law Section of the American Bar Association from 2005 to 2008 and as a Budget Officer since 2012. During that time period, the Section prepared and presented white papers or comment letters on a variety of issues in the public procurement arena. As a matter of course, I always recused myself from the preparation of these papers or letters in the event that such matters became relevant in any of my cases, at the time or in the future. Although I did not participate in any of these letters or recommendations, it has come to my attention during this nomination process that some of the letters inadvertently left out the footnote noting my recusal. I did, however, recuse myself each time.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

February 6, 2014: Panelist, "A Pathway to the Bench," ABA Judicial Clerkship Program, Chicago, Illinois. I participated with other judges on a panel that focused on the individual panelists' career paths, as well as a short question-and-answer session. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

April 17, 2013: Panelist, American Bar Association Public Contract Law Section, Contract Claims and Disputes Committee, Washington, DC. The panel discussed pre-hearing techniques before the Board of Contract Appeals. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

June 13, 2012: Panelist, "Ask the Judge," American Bar Association Public Contract Law Section, Contract Claims and Disputes Committee, Washington, DC. I participated on a panel discussing practice and procedure before the Board of Contract Appeals and the Court of Federal Claims. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

April 26, 2012: Participant, Pathway to the Bench Conference, American Constitution Society for Law and Policy, Washington, DC Lawyer Chapter, Washington, DC. I participated with other judges on a panel that focused on the individual panelists' career paths, as well as a short question-and-answer session. I have no notes, transcript, or recording. The address of the American Constitution Society for Law and Policy is 1333 H Street, NW, Washington, DC 20005.

September 14, 2011: Panelist, "Interesting Government Contract Cases," Practicing Law Institute, Washington, DC. I participated on a panel discussing

the most interesting government contract cases for the year. I have no notes, transcript, or recording. The address for the Practicing Law Institute is 1177 Avenue of the Americas, 2nd Floor (Entrance on 45th Street), New York, NY 10036.

June 8, 2011: Panelist, "Ask the Judge," American Bar Association Public Contract Law Section, Contract Claims and Disputes Committee, Washington, DC. I participated on a panel discussing practice and procedure before the Board of Contract Appeals and the Court of Federal Claims. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

March 3-5, 2011: I was a moderator at an event hosted by the American Bar Association and the Federal Procurement Institute in Annapolis, Maryland. I served as moderator and introduced various panels and speakers. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

November 8, 2010: I was a panelist at a conference hosted by the American University School of Law in Washington, DC. The panel discussed government contract cases from the United States Court of Appeals for the Federal Circuit. I have no notes, transcript or recording. The address of the American University Law School is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

March 6, 2010: Panelist at the Color of Justice Program, hosted by various bar associations, including the Fairfax Bar Association, in Alexandria, Virginia. I discussed my career progression to the bench. I have no notes, transcript, or recording. The address of the Fairfax Bar Association is 4110 Chain Bridge Road, Suite 216, Fairfax, VA 22030.

October 22, 2009: Panelist, "Ask the Judge," Board of Contract Appeals Bar Association Annual Meeting, Washington, DC. I discussed practice tips for litigating before the Board of Contract Appeals. I have no notes, transcript, or recording. The address of the Board of Contract Appeals Bar Association is P.O. Box 66612, Washington, DC 20035.

July 23, 2009: Panelist, "Getting to Know Our Specialized Courts," National Association of Women Judges, held in Washington, D.C. I have no notes, transcript, or recording. The address of the National Association of Women Judges is 1341 Connecticut Avenue, NW, Suite 4.2, Washington, DC 20036-1834.

September 25, 2008: Panelist on a panel organized by the Just The Beginning Foundation, held in Herndon, Virginia. I discussed career paths in the legal field with high school students. I have no notes, transcripts or recording. The address

of the Just The Beginning Foundation is 233 South Wacker Drive, Suite 6600, Chicago, IL 60606.

September 17, 2008: Panelist, George Mason Inn of Court, Arlington, Virginia. I participated on a panel in which we discussed the career progression for becoming a judge. I have no notes, transcript, or recording. The address of the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, VA 22314.

June 11, 2008: Panelist, American Bar Association Contract Claims and Disputes Committee, in Washington, D.C. The panel discussed electronic discovery. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

April 15, 2007: Panelist, 11th Annual Sylvania Woods Conference on African Americans and the Law, American University School of Law, Washington, DC. I participated in informal conversations with students about career path in a loosely configured panel format. I have no notes, transcript, or recording. The address of the American University School of Law is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

February 17, 2007: Speaker, Virginia State Bar Young Lawyers Minority Event, Arlington, VA. I provided brief remarks concerning my career progression. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

May 4, 2006: Moderator, Virginia State Bar Professionalism Course, Chesapeake, Virginia. I provided brief introductions of each of the speakers. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

September 22, 2005: Moderator, Virginia State Bar Professionalism Course, Richmond, Virginia. I provided brief introductions of each of the speakers. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

August 25, 2005: Moderator, Virginia State Bar Professionalism Course, Roanoke, Virginia. I provided brief introductions of each of the speakers. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

July 20, 2005: Moderator, Virginia State Bar Professionalism Course, McLean, Virginia. I provided brief introductions of each of the speakers. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

January 13, 2005: Speaker, Virginia State Bar Professionalism Course, McLean,

Virginia. I provided brief remarks at lunch on the issue of professionalism. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

October 27, 2004: Speaker, George Mason Inn of Court of the American Inns of Courts, Arlington, Virginia. I participated in a panel discussion on federal discovery and practice. I have no notes, transcript, or recording. The address of the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, VA 22314.

October 13, 2004: Panelist, "Ask the Judge," American Bar Association Public Contract Law Section, Contract Claims and Disputes Committee, Washington, DC. I participated on a panel discussing practice and procedure before the Board of Contract Appeals and the Court of Federal Claims. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

February 27, 2004: Panelist, American Bar Association Procurement Institute, Case Review, Annapolis, Maryland. I participated with other judges on a panel focused on current government contracts cases. The panel was a question-and-answer format and the panelists discussed the issues arising in various government contract opinions issued by the Board of Contract Appeals, the Court of Federal Claims, and the Court of Appeals for the Federal Circuit. I have no notes, transcript, or recording. The address of the American Bar Association is 321 N. Street, Chicago, IL 60654-7598.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

John K. Harms, "Judicial Profile – Judge Jeri K. Somers," Federal Bar Association, July 2013. Copy supplied.

Mary Jefferson, "Member Focus – Jeri Somers," Women on Course, July 16, 2012. Copy supplied.

Rob Margetta, "CQ Homeland Security – For Disputes Over Disaster Aid, a New Arbitration System A Focus on Expediency and Independence," CQ Homeland Security, Congressional Quarterly, August 6, 2009. Copy supplied.

Jerry Markon, "7 Named on Short List for U.S. Bench Senators Identify Talent; Choice is in Bush's Court," Washington Post, May 17, 2007. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

The Secretary of the Department of Transportation appointed me to be an administrative judge with the U.S. Department of Transportation Board of Contract Appeals (DOTBCA) in April 2003. In January 2007, I became a Board Judge with the U.S. Civilian Board of Contract Appeals, created from the consolidation of eight separate boards of contract appeals, which included the DOTBCA. The boards of contract appeals hear and decide contract disputes between government contractors and civilian executive agencies under the provisions of the Contract Disputes Act, 41 U.S.C. Sections 7107-7109.

I served as a military judge for the United States Air Force from 2004 to 2007. As such, I presided over criminal misdemeanor and felony courts-martial, including both jury and bench trials, arising under the Uniform Code of Military Justice.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

As an administrative judge, both with the Department of Transportation Board of Contract Appeals, and with the United States Civilian Board of Contract Appeals, I have presided over approximately 150 cases that have gone to judgment. These cases have been bench trials, although cases are frequently resolved by decision on motion.

As a United States military judge, I presided over numerous military bench and jury trials that resulted in verdicts or judgments. However, the records in military proceedings are not accessible to the general public, and I do not have personal access to the number of cases over which I presided that went to verdict or judgment. Based on supposition alone, I would approximate 25 matters went to verdict or judgment, of which 10 were tried by a jury.

Based upon a rough approximation of those cases that proceeded to trial, I have provided a breakdown below. I have also provided an estimated breakdown of civil and criminal over which I have presided in the course of these two judicial offices that were resolved by judgment or verdict.

- i. Of these, approximately what percent were:

jury trials:	5%
bench trials:	95%
civil proceedings:	95%
criminal proceedings:	5%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

Please see attached list.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *USIA Underwater Equipment Sales Corporation v. Department of Homeland Security*, CBCA 2579, 2014 CIVBCA LEXIS 19 (2014); 2012 CIVBCA LEXIS 332 (2012).

The Coast Guard had a contract to purchase 777 dry suits from USIA for use in training. The Coast Guard terminated the contract for default, based upon the contractor's failure to provide dry suits that did not leak. In addition, the government sought reprourement costs from the contractor. After extensive briefing, we denied the parties cross-motions for summary relief, and set the case for trial. After hearing the evidence at trial, and evaluating all of the evidence, we determined that the Coast Guard had properly terminated the contractor for default, but had failed to properly claim excess reprourement costs because it had never issued a final decision assessing such costs.

Counsel for appellant: Joseph Billings, Miles & Stockbridge, PC, 100 Light Street, Baltimore, MD 21202; 410-385-3497.

Counsel for Respondent: Wilbur Jones, Office of Procurement Law, U.S. Coast Guard, Department of Homeland Security, 2100 Second Street, SW, Mail Stop 7121, Washington, DC 20593-0001; 202-372-3843.

2. *Turner Construction Co. v. Smithsonian Institution*, CBCA 2862, 2013 CIVBCA Lexis 90; 13-1 BCA (CCH) ¶ 35,290.

The Smithsonian Institute contracted with Turner Construction Company to provide design and construction services for a long term public space renovation at the National Museum of American History. The total contract price ultimately reached \$75 million after multiple contract modifications. The parties filed a motion for summary relief on a limited issue – whether the parties had agreed upon a contract price for the construction work in accordance with the contract's terms. After evaluating the contract, all modifications and other evidence, we held that the parties had never reached agreement on the final contract price, and that the Smithsonian owed Turner Construction a reasonable amount for the work that had been performed on the contract for which it had not yet been paid. The case is currently pending before us on the issue of quantum.

Counsel for appellant: Douglas Patin, Bradley Arant Boult Cummings LLP, 1615 L Street, NW, Suite 1350, Washington, DC 20036; 202-719-8241

Counsel for respondent: Peter D'Ambrosio and Todd Conley, Womble Carlyle Sandridge & Rice, LLP, 1200 Nineteenth Street, NW, Suite 300, Washington, DC 20036; 202-857-4516 (withdrawn); currently Craig A. Holman and Kara L. Daniels, Arnold & Porter, LLP, 555 12th Street, NW, Washington, DC 20004; 202-942-5768.

3. *Systems Integration & Management Inc. v. General Services Administration*, CBCA 1512, 1537, 2013 CIVBCA LEXIS 188; 13-1 BCA ¶ 35,417.

Appellant Systems Integration & Management Inc. (SIM) alleged that GSA owed it over \$1 million for ten unpaid task orders. The case presented a novel issue before the Board – whether the Board possessed jurisdiction over a claim when, at the time of filing the claim, the contractor corporate status had become forfeited or void under the law of the state of incorporation. In this case, SIM had filed its claim in 2008. GSA discovered shortly before trial that SIM, a Delaware corporation, was not operating as a corporation in good standing. SIM took actions to reinstate its corporate status, and GSA filed a motion to dismiss. We held that under Delaware law, once the corporation had been reinstated, all actions are deemed to have been done and performed “with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect.” Once properly reinstated, all corporate actions, whether before reinstatement or after, are validated under Delaware Law. We also issued a decision on the merits of the case, finding that GSA had failed to rebut SIM’s evidence that it had submitted invoices to the government, together with supporting documentation, and GSA had failed to rebut appellant’s evidence. GSA filed a motion for reconsideration, which we denied.

Counsel for appellant: Stuart W. Turner and Emma V. Broomfield, Arnold & Porter, LLP, 555 12th Street, NW, Washington, DC 20004; 202-942-5759.

Counsel for respondent: Nathan C. Guerrero, Office of General Counsel, General Services Administration, 1800 F Street, NW, Room 544, Washington, DC 20205; 202-501-0501.

4. *Fluor Intercontinental Inc. v. Department of State*, CBCA Nos. 490, et al, 2012 CIVBCA LEXIS 89, 12-1 BCA ¶ 34,989, *affirmed without opinion*, *Fluor Intercontinental v. Kerry*, 2013 U.S. App. LEXIS 19073 (Fed. Cir. Sept. 16, 2013).

The Department of State contracted with Fluor Intercontinental Inc. (Fluor) to design and construct an embassy complex in Astana, Kazakhstan for a firm fixed price of over \$63 million. Fluor experienced significant difficulty obtaining

appropriate materials, delay because of the absence of electricity and other utilities and infrastructure, and problems in the actual construction due to the harsh weather conditions. The contract had a challenging construction schedule and Fluor quickly fell behind. Fluor filed multiple claims, totaling approximately \$24 million, for delay, changed conditions, and acceleration, among other claims. After a multi-week trial involving multiple experts and an appeal file containing millions of documents, we held that Fluor had failed to prove entitlement. Ultimately, the contract put the risk on the contractor, and Fluor could not show any evidence or present any legal theories that would shift the risk of performance from the contractor back to the government. Fluor appealed the decision to the United States Court of Appeals for the Federal Circuit, which affirmed the decision.

Counsel for Appellant: Edward Parrott, Watt, Tieder, Hoffar & Fitzgerald, LLP, 8405 Greensboro Drive, Suite 100, McLean, VA 22102; 703-749-1000.

Counsel for Respondent: John Sawyer and Thomas Dinackus, Office of the Legal Advisor, Buildings and Acquisitions, Department of State, PO Box 12408, Rosslyn, VA 22209; 703-516-1539.

5. *URS Energy & Construction Inc. v. Department of Energy*, CBCA 2260, 2012 CIVBCA LEXIS 169, 12-2 BCA ¶35,094.

This case involved a claim by URS Energy & Construction Inc. (URS) for reimbursement of \$8 million, which was the cost paid to its surety as part of an indemnity obligation. The claim resulted from litigation between URS and a subcontractor in the United States District Court of Colorado, which URS lost. In order to appeal, the district court required URS to provide an appeal bond, known as a supersedeas bond. URS signed an indemnity agreement with its surety. Ultimately, the surety paid the appeal bond pursuant to the indemnity agreement with URS. As required by the agreement, URS reimbursed the surety. URS subsequently sought reimbursement from the Department of Energy ("DOE") pursuant to the terms of the cost reimbursement contract. Applying cost accountability standards to determine whether the costs were allocable and allowable under the contract, we found URS was entitled to receive reimbursement of all amounts paid to the surety. We denied DOE's motion for reconsideration.

Counsel for Appellant: Daniel Frost, Snell & Wilmer LLP, 1200 Seventeenth Street, Suite 1900, Denver, CO 80202; 303-634-2038.

Counsel for Respondent: Brady Jones III, Office of Legal Services, Environmental Management Consolidated Business Center, Department of Energy, 250 East Fifth Street, Suite 500, Cincinnati, Ohio 45202; 513-246-0543.

6. *Shaw Environmental v. Department of Homeland Security*, CBCA 2177, 2367, 2012 CIVBCA LEXIS 312, 13-1 BCA ¶ 35,188.

Shaw Environmental installed travel trailers purchased by FEMA for use by disaster survivors of Hurricanes Katrina, Rita and other disasters. Later, thousands of plaintiffs filed suit against the contractors, including Shaw, for exposure to formaldehyde. Shaw incurred legal expenses defending these lawsuits, and sought reimbursement of these expenses from FEMA pursuant to its cost-reimbursable contract. In the first set of cases, we held that the appeal was moot because FEMA paid Shaw for all amounts due in the outstanding invoices. In the most recent case, we held that Shaw may be entitled to reimbursement for those costs, but that Shaw had to prove entitlement. The case is still pending.

Counsel for Appellant: Thomas Lemmer, McKenna Long & Aldridge, 1400 Wewatta Street, Denver, CO 80202; 303-634-4000.

Counsel for Respondent: Audrey Liebross, Office of the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW, Room 717, Washington, DC 20472; 202-646-7664.

7. *Arctic Slope Native Association, Ltd v. Department of Health and Human Services*, CBCA No. 1953 (190-ISDA)-REM, 1954 (289-ISDA)-REM, 1955 (290-ISDA)-REM, 1956 (291-ISDA)-REM, 1957 (292-ISDA)-REM, 1958 (293-ISDA)-REM 2011 CIVBCA LEXIS 163; 11-2 BCA ¶ 34,778, *reversed and remanded* 699 F.3d 1289 (Fed. Cir. 2012).

Appellant Arctic Slope Native Association (ASNA) provided health care services to its members under self-determination contracts with the Department of Health and Human Services (DHHS), issued under the Indian Self-Determination and Education Assistance Act. This appeal from DHHS is one of hundreds of cases pending before the board, the Court of Federal Claims and various district courts addressing the issue of whether the tribes are entitled to be paid for additional amounts of indirect contract support costs. Because each fiscal year is a different claim, the original cases were assigned to different judges and have led to multiple appeals. This appeal originally covered claims for additional amounts of indirect contract support costs for five fiscal years (FY 1996 – 2000). The original panel assigned to this case granted a motion to dismiss six claims for FY 1996 – 1998 on the grounds that the court did not possess jurisdiction to consider the claims because they had not been filed within six years after they accrued, but denied the motion to dismiss as to FY 1999 – 2000 on the ground that the Board could not determine based upon the record whether the additional funds for contract support costs would cause the agency to exceed the available funding appropriated for such costs.

With the retirement of one judge on the panel, I was assigned to join the panel to preside over the FY 1999 – 2000 portion of the case. We ruled for the

government, concluding that the record supported the government's argument that no appropriate funds remained to pay the claims because the government had already reached the caps contained in the contracts. The Federal Circuit affirmed, and ASNA appealed to the Supreme Court. In a parallel case, the Supreme Court held that the agency must pay all costs, holding, among other things, that an agency's inability to pay a contract in full because agency funds run out does not preclude money damages in court for breach of contract, and that all contract provisions and the Indian Self-Determination Act must be liberally construed in favor of the tribes. *Salazar v. Ramah Navajo Chapter*, 567 U.S. ___, 132 S. Ct. 995 (2012). Referencing its decision in *Ramah*, the Supreme Court remanded the Arctic Slope case for further actions consistent with that decision. The portion of the case relating to FY 1999 – 2000 settled on remand.

In the interim, the Federal Circuit remanded the panel's previous decision as to FY 1996 – 1998 for a determination as to whether equitable tolling should apply. On remand, I wrote the majority opinion concluding that equitable tolling was not warranted because ASNA did not exercise reasonable diligence to protect its rights. In a split decision, the Federal Circuit reversed and remanded, concluding that equitable tolling was warranted, relying in part on the special relationship between the government and the Indian tribes. We dismissed the case as to FY 1996 – 1999 upon the parties' request upon settlement of the claims.

Counsel for Appellant: Lloyd Miller, Sonosky, Chamber, Satche, Miller & Munson, 900 W. 5th Avenue, Suite 700, Anchorage, AK 99501; (907) 258-6377.

Counsel for Respondent: Sean Dooley, Office of General Counsel, Department of Health and Human Services, 5600 Fishers Lane, Room 4A-53, Parklawn Bldg., Rockville, MD 20857; 301-443-0405.

8. *Nu-Way Concrete Company, Inc. v. Department of Homeland Security*, CBCA 1411, 2010 CIVBCA LEXIS 323, 11-1 BCA ¶ 34,636.

FEMA hired Nu-Way Concrete Company, Inc. (Nu-Way) to deactivate mobile homes and travel trailers used in support of disaster operations. Nu-Way complained about overzealous inspections, which it alleged greatly increased its costs. Nu-Way presented some testimonial evidence that FEMA inspectors may have been overzealous in some inspections. However, in the absence of records or evidence to support its claims for \$2.5 million in increased costs, we found that Nu-Way could not support its claim. Under case precedent, in the absence of quantum, the claim can be denied, even if some evidence supports the allegations in the claim.

Counsel for Appellant: J. Marshall Gilmore of the Law Office of J. Marshall Gilmore, 1150 Louisiana Avenue, Suite 4, Winter Park, FL 32789; 407-629-7322.

Counsel for Respondent: Jean Hardin, Office of Chief Counsel, Federal

Emergency Management Agency, Department of Homeland Security, 500 C Street, NW, Washington, DC 20472; 202-646-4059.

9. *TAS Group, Inc. v. Department of Justice*, CBCA 52, 2008 CIVBCA LEXIS 135, 08-1 BCA ¶33,866.

The United States Marshall's Service at the Department of Justice entered into a contract with TAS Group, Inc., (TAS), which required TAS to provide passenger aircraft for use by the government. Under the contract, TAS remained liable for all damage to the aircraft except where damage arose from the government's negligence. At the beginning of a flight, the engine became damaged during a "hot start." TAS filed a claim for damages exceeding \$800,000. The government filed a motion to dismiss on the grounds that the case sounded in tort rather than contract. We determined that although the claim arose under a tort theory, the contract clauses governed and we could hear the case. Using an analysis grounded in common law negligence (and after addressing the fact that the negligent actions occurred in a foreign country), after evaluating the evidence adduced at trial, we found that TAS had established that the engine damage arose from a pilot's failure to properly anticipate and respond to a "hot start" and that the government owed TAS damages in the amount of \$827,743.

Counsel for Appellant: Carolyn Callaway, CSI Aviation Services, Inc., 1428 Catron Avenue, SE, Albuquerque, NM 87123; 505-529-9774.

Counsel for Respondent: Timothy McIlmail, Commercial Litigation Branch, Civil Division, 1100 L Street, NW, Washington, DC 20005; 202-307-0290.

10. *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 982, 2008 CIVBCA LEXIS 231, 08-2 BCA 33,974.

The government hired Tidewater Contractors, Inc. to perform road work in California. The contractor sought an extension of the contract completion date, arguing that the government had failed to timely issue a notice to proceed. The government argued that it had issued two notices to proceed, one that allowed the contractor to perform some preparatory work and the other instructing the contractor to begin contract performance. After trial, we analyzed the various arguments related to the extension of time and delay and held that the contractor had established it was entitled to a portion of the damages sought. We denied a motion for reconsideration.

Counsel for Appellant: Joseph Yazbeck, Yazbeck, Cloran & Hanson, LLC, 1300 S.W. Fifth Avenue, Suite 2750, Portland, OR 97201; 503-227-1428.

Counsel for Respondent: David Sett, Federal Highway Administration, 12300 W. Dakota Avenue, Lakewood, CO 80228; 720-963-3445.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *URS Energy & Construction Inc. v. Department of Energy*, CBCA 2260, 2012 CIVBCA LEXIS 169, 12-2 BCA ¶35,094.

Counsel for Appellant: Daniel Frost, Snell & Wilmer LLP, 1200 Seventeenth Street, Suite 1900, Denver, CO 80202; 303-634-2038.

Counsel for Respondent: Brady Jones III, Office of Legal Services, Environmental Management Consolidated Business Center, Department of Energy, 250 East Fifth Street, Suite 500, Cincinnati, OH 45202; 513-246-0543.

2. *Turner Construction Co. v. Smithsonian Institution*, 2013 CIVBCA Lexis 90; 13-1 BCA (CCH) ¶ 35,290.

Counsel for appellant: Douglas Patin, Bradley Arant Boult Cummings LLP, 1615 L Street, NW, Suite 1350, Washington, DC 20036; 202-719-8241.

Counsel for respondent: Peter D'Ambrosio and Todd Conley, Womble Carlyle Sandridge & Rice, LLP, 1200 Nineteenth Street, NW, Suite 500, Washington, DC 20036; 202-857-4516 (withdrawn); currently Craig A. Holman and Kara L. Daniels, Arnold & Porter LLP, 555 12th Street, NW, Washington, DC 20004; 202-942-5768.

3. *Systems Integration & Management Inc. v. General Services Administration*, CBCA 1512, 1537, 2013 CIVBCA LEXIS 188; 13-1 BCA ¶ 35,417.

Counsel for appellant: Stuart W. Turner and Emma V. Broomfield, Arnold & Porter, LLP, 555 12th Street, NW, Washington, DC 20004; 202-942 5759.

Counsel for respondent: Nathan C. Guerrero, Office of General Counsel, General Services Administration, 1800 F Street, NW, Room 544, Washington, DC 20205; 202-501-0501.

4. *Fluor Intercontinental Inc. v. Department of State*, CBCA Nos. 490, et al, 2012 CIVBCA LEXIS 89, 12-1 BCA ¶ 34,989, *affirmed without opinion*, *Fluor Intercontinental v. Kerry*, 2013 U.S. App. LEXIS 19073 (Fed. Cir. Sept. 16, 2013).

Counsel for Appellant: Edward Parrott, Watt, Tieder, Hoffar & Fitzgerald, LLP, 8405 Greensboro Drive, Suite 100, McLean, VA 22102; 703-749-1000.

Counsel for Respondent: John Sawyer and Thomas Dinackus, Office of the Legal Advisor, Buildings and Acquisitions, Department of State, PO Box 12408, Rosslyn, VA 22209; 703-516-1539.

5. *Shaw Environmental v. Department of Homeland Security*, CBCA 2177, 2367, 2012 CIVBCA LEXIS 312, 13-1 BCA ¶ 35,188.

Counsel for Appellant: Thomas Lemmer, McKenna Long & Aldridge, 1400 Wewatta Street, Suite 700; Denver, CO 80202; 303-634-4000.

Counsel for Respondent: Audrey Liebross, Office of the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, S.W., Room 717, Washington, DC 20472; 202-646-7664.

6. *USIA Underwater Equipment Sales Corporation v. Department of Homeland Security*, CBCA 2579, 2014 CIVBCA LEXIS 19 (2014); 2012 CIVBCA LEXIS 332 (2012).

Counsel for appellant: Joseph Billings, Miles & Stockbridge, PC, 100 Light Street, Baltimore, MD, 21202; 410-385-3497.

Counsel for Respondent: Wilbur Jones, Office of Procurement Law, U.S. Coast Guard, Department of Homeland Security, 2100 Second Street, S.W., Mail Stop 7121, Washington, DC 20593-0001; 202-372-3843.

7. *Arctic Slope Native Association, Ltd v. Department of Health and Human Services*, CBCA No. 190-ISDA, et al, 2011 CIVBCA LEXIS 163; 11-2 BCA ¶ 34,778, *reversed and remanded*, 699 F.3d 1289 (Fed. Cir. 2012).

Counsel for Appellant: Lloyd Miller, Sonosky, Chamber, Sachse, Miller & Munson, 900 West Fifth Ave., Suite 700, Anchorage, AK 99501; 907-258-6377.

Counsel for Respondent: Sean Dooley, Office of General Counsel, Department of Health and Human Services, 5600 Fishers Lane, Room 4A-53 – Parklawn Bldg., Rockville, MD 20857; 301-443-0405.

8. *Nu-Way Concrete Company, Inc. v. Department of Homeland Security*, CBCA 1411, 2010 CIVBCA LEXIS 323, 11-1 BCA ¶ 34,636.

Counsel for Appellant: J. Marshall Gilmore of the Law Office of J. Marshall Gilmore, 1150 Louisiana Avenue, Suite 4, Winter Park, FL 32789; 407-629-7322.

Counsel for Respondent: Jean Hardin, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, S.W., Washington, DC 20472; 202-646-4059.

9. *TAS Group, Inc. v. Department of Justice*, CBCA 52, 2008 CIVBCA LEXIS 135, 08-1 BCA ¶33,866.

Counsel for Appellant: Carolyn Callaway, CSI Aviation Services, Inc.
1428 Catron Ave., SE, Albuquerque, NM, 87123; 505-529-9774.

Counsel for Respondent: Timothy McIlmail, Commercial Litigation Branch,
Civil Division, U.S. Department of Justice, 1100 L Street, NW, 8th Floor,
Washington, DC 20005; 202-307-0290.

10. *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 982-C(50), 2008 CIVBCA LEXIS 231, 08-2 BCA 33,974.

Counsel for Appellant: Joseph Yazbeck, Yazbeck, Cloran & Hanson, LLC, 1300
S.W. Fifth Avenue, Suite 2750, Portland, OR, 97201; 503-227-1428.

Counsel for Respondent: David Sett, Federal Highway Administration, 12300 W
Dakota Avenue, Lakewood, CO, 80228; 720-963-3446.

- e. Provide a list of all cases in which certiorari was requested or granted.

Arctic Slope Native Association, LTD v. Sebelius, CBCA 294-ISDA, CBCA 295-ISDA, CBCA 296-ISDA, CBCA 297-ISDA, 09-2 BCA 34281, 2009 WL 3188059; 629 F.3d 1296 (Fed. Cir. 2010); 133 S.Ct. 22 (2012).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Of the approximately 150 cases over which I have presided while on the Department of Transportation Board of Contract Appeals and with the United States Civilian Board of Contract Appeals, I am only aware of one case that has been remanded, albeit in two separate appeals:

Arctic Slope Native Ass'n, Ltd. v. Sebelius, CBCA No. 1963 (190-ISDA)-REM, et. al., 11-2 BCA ¶ 34778 (2011).

In a portion of the *Arctic Slope Native Association* litigation relating to FY 1996 – 1998, I wrote the majority opinion for the panel concluding that the equitable tolling was not warranted on this record because ASNA did not exercise reasonable diligence to protect its rights. In a split decision, the Federal Circuit reversed and remanded, concluding that equitable tolling was warranted, relying in part on the special relationship between the government and the Indian tribes identified in *United States v. Mitchell*,

463 U.S. 206, 225 (1983). On remand, we dismissed the case upon the parties' request upon settlement of the claims.

Arctic Slope Native Association, Ltd v. Department of Health and Human Services, CBCA No. 1953 (190-ISDA)-REM, 1954 (289-ISDA)-REM, 1955 (290-ISDA)-REM, 1956 (291-ISDA)-REM, 1957 (292-ISDA)-REM, 1958 (293-ISDA)-REM 2011 CIVBCA LEXIS 163; 11-2 BCA ¶ 34,778, reversed and remanded 583 F.3d 785 (2011).

In a portion of the *Arctic Slope Native Association* litigation relating to FY 1999 – 2000, we concluded unanimously that it would exceed the government's budgetary authority to pay ASNA's claims because the government had already reached the caps contained in the relevant contracts. The Federal Circuit affirmed. In a parallel case, the Supreme Court held that the fact that an agency runs out of funds under the terms of the contract does not preclude money damages for breach of contract. *Salazar v. Ramah Navajo Chapter*, 567 U.S. ___, 132 S. Ct. 995 (2012). In light of *Ramah*, the Supreme Court reversed and remanded. The parties settled on remand.

Because records in military proceedings are not accessible to the general public, I do not have personal access to this specific information concerning the cases over which I have presided. To respond to this question, I conducted an extensive appellate search of LexisNexis and Westlaw. Of the decisions reported in response to my query, the following is relevant to this question:

United States v. Charles R. Phillips, USAF, ACM 36412, 2008 CCA LEXIS 113 (March 19, 2008)

Serving as a military judge, sitting alone, I convicted appellant of failure to obey and order, carnal knowledge, making and uttering bad checks, and violating multiple other counts of the Uniform Code of Military Justice. I adjudged a sentence of dishonorable discharge, confinement for 28 years, and reduction to E-1. The appellate court affirmed the findings, found the sentence to be within legal limits, but used its discretion to reduce the sentence to 15 years. The appellate court determined that I should have included the records that I reviewed in camera in the record of trial, but found that the omission was insubstantial and did not render the record incomplete.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

United States Civilian Board of Contract Appeals and United States Department of Transportation Board of Contract Appeals: The Board's decisions, which

include decisions issued by me, are published on our website: www.cbca.gov, and, in addition, published in volumes maintained by the CCH Government Contracts Reporter.

Military Judge: I ruled from the bench, rather than issuing written opinions.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have not issued opinions on federal or state constitutional issues.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Administrative Judge: In addition to the Board's internal conflict check, I monitor all civil cases for potential conflicts. I have not had a case, motion, or matter in which I assessed the necessity or propriety of recusal. I am unaware of any cases, motions, or matters that have come before me in which a litigant or party requested that I recuse myself due to an asserted conflict of interest or in which I recused myself sua sponte.

Military Judge: As a military judge, I approached each case on a case-by-case basis. I do not recall ever recusing myself sua sponte or being asked to recuse. Because the records

in military proceedings are not accessible to the public. I do not have personal access to information by which I could confirm this recollection.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have held no public offices. I have not been a candidate for any appointed office or a nominee for any elected office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not been a member or held a position in a political party or election committee.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1986 – 2007
United States Air Force Trial Judiciary, Eastern Circuit
Air Force Legal Services Agency
Bolling Air Force Base, Washington, D.C.
(At various locations throughout service)

Reserve Judge Advocate (1991 – 2007)
Active duty Judge Advocate (1986 – 1991)

1991 – 1994
United States Department of Justice
Commercial Litigation Branch, Civil Division
PO Box 480, Ben Franklin Station
Washington, D.C. 20044
Trial Attorney

1994 – 2001
Office of the United States Attorney
Eastern District of Virginia, Alexandria Division
2100 Jamieson Avenue
Alexandria, VA 22314
Assistant U.S. Attorney

2001 – 2003
Miller & Chevalier Chartered
655 15th Street NW, Suite 900
Washington, D.C. 20004
Counsel

June 2013 – December 2013
(from my private residence)
Private Mediator/Arbitrator (independent contractor)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I served as an arbitrator in one alternative dispute resolution proceeding from June to December 2013, a bid protest matter in the case of *Stryker Communications (Stryker) v. Dallas County Hospital District d/b/a Parkland Health and Hospital System*, located in Dallas, Texas.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1986 until 1991, I served on active duty in the United States Air Force, including time during Operation Desert Shield and Desert Storm. I prosecuted and defended criminal cases, provided legal advice to commanders on military issues, such as the laws of armed conflict, rules of engagement, international issues, employment and union issues, and

tort claims. I acted as the liaison to local United States Attorney's Offices. I represented the United States before the Armed Services Board of Contract Appeals. From 1991 to 1993, as a reservist and a member of the National Guard, I continued my service to the country. I litigated cases involving government contracts before the Board of Contract Appeals and the Court of Federal Claims. From 1993 to 1996, I served at the D.C. Army National Guard. My duties involved handling a variety of matters at the National Guard Bureau headquarters, including issuing legal opinions on personnel matters. From 1996 through 2004, I served as the D.C. Air National Guard Headquarters Staff Judge Advocate, and provided legal advice to the commanding general during the September 11, 2001 attacks on Washington, D.C.

While on reserve duty, I served as a Trial Attorney in the Commercial Litigation Branch of the Civil Division from 1991 until 1994. My practice consisted of work before the United States Court of Appeals for the Federal Circuit and the United States Court of Federal Claims. I served as lead trial attorney over a significant amount of trial level and appellate cases, as well as serving as one of the original members of the trial team in a case involving what has become known as the A-12 litigation. I also handled appeals before the United States Court of Appeals for the Federal Circuit.

From 1994 to 2001, I served as an Assistant United States Attorney in the United States Attorney's Office in the Eastern District of Virginia, Alexandria Division. I acted as lead trial attorney representing the United States before the United States District Court for the Eastern District and in state court in cases involving government contracts, employment disputes, regulatory matters, immigration issues, and claims arising under various federal statutes, as well as appeals before the United States Court of Appeals for the Fourth Circuit.

From 2001 to 2003, as Counsel at the law firm of Miller & Chevalier, I represented individuals and corporations in civil and criminal actions in federal courts. As such, I assisted parties in all phases of preparation for civil and criminal cases. I also represented corporations in "337" litigation before the United States International Trade Commission, and advised clients about issues arising under the Foreign Corrupt Practices Act. I provided counseling and training to government contractors and corporations on various employment and government contract issues.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

For the majority of my legal career, my client has been the United States. I have specialized in the areas of federal government contracts and other

federal laws. From 2001 until 2003, I represented corporations and individuals in primarily civil actions in Federal and State Courts while at Miller & Chevalier.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Almost all of my work has involved litigation, with the vast majority in federal courts or federal administrative agencies. I frequently appeared in court during my time on active duty in the United States Air Force, at the Commercial Litigation Branch, Civil Division, at the Department of Justice, and as an Assistant United States Attorney in the Office of the U.S. Attorney, Eastern District of Virginia, Alexandria Division. As Counsel at Miller & Chevalier, I appeared in federal courts and federal administrative adjudicatory forums infrequently.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 50% |
| 2. state courts of record: | 0% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 50% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 95% |
| 2. criminal proceedings: | 5% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Because I no longer have access to these records, I am providing my best estimate based upon my memory. I tried approximately 200 cases as primary counsel, including cases before military judges, federal judges, and administrative fora, including the boards of contract appeals, EEO hearings, ITC actions, and suspension and debarment matters.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 5% |
| 2. non-jury: | 95% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not been counsel of record or personally argued before the Supreme Court. I am listed as one of five attorneys from the Department of Justice on a brief submitted on behalf of respondent in opposition to a petition for a writ of certiorari in the case of *Janet M. Clark v. Department of the Army*, 1994 WL 16100883, filed on January 3, 1994, involving an appeal of an employment matter originally submitted before the Merit Systems Protection Board, appealed to the United States Court of Appeals for the Federal Circuit, and then to the U.S. Supreme Court.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I no longer have access to my records from the U.S. Attorney's Office for the Eastern District of Virginia or the Department of Justice. I have provided the information for the following cases to the best of my recollection after reviewing copies of briefs that I had prepared for submission in the various cases.

1. *BTG, Inc. v. Department of Education*, Civil Action No. 00-1069 (EDVA).

In 2000, BTG, Inc. filed a bid protest against the Department of Education (DOE), which involved a \$68 million contract award for computer services for the DOE. BTG, Inc. alleged that the agency should have used a negotiated procurement procedure under FAR Part 15 instead of procedure followed by the agency, using the simplified acquisition procedures set forth in FAR Part 8. After the government filed a motion for summary judgment, Judge Gerald Bruce Lee found for DOE. I served as the lead counsel on the case in 2000.

Counsel for BTG, Inc.: Sharon L. Babbin, Tighe, Patton & Babbin, PLLC, 1747 Pennsylvania Avenue, NW, Washington DC 202-383-1450.

Counsel for Intervenor's Counsel: James McCullough, Fried Frank Harris Schriver & Jacobson, 1001 Pennsylvania Avenue, Suite 800, Washington, DC 20004, 202-639-7000.

2. *CESC Plaza Limited Partnership v. U.S. Department of Commerce, Patent and Trademark Office*, Civil Action No. 98-1837-A (EDVA).

This case involved the largest lease agreement ever awarded at the time by the GSA for the consolidation of the U.S. Patent and Trademark Office from 18 separate buildings in Crystal City to a complex of buildings located in Alexandria. Filing in the Eastern District of Virginia, CESC Plaza Limited Partnership alleged that the agency included requirements in the solicitation for offers that impermissibly prejudiced the plaintiff's ability to compete with an offer of currently existing buildings. In essence, CESC argued that the agency violated the Administrative Procedure Act when it set forth requirements so that only newly constructed buildings could fulfill the requirements. After cross-motions for summary judgment, Judge James C.acheris granted the agency's motion for summary judgment and found that solicitation did not violate the APA or the Competition in Contracting Act. The Fourth Circuit affirmed. As lead counsel, I handled all aspects of the litigation from 1999 to 2000, including the appeal to the Court of Appeals for the Fourth Circuit.

Counsel for Plaintiff: Benjamin G. Chew, Patton Boggs, LLP, 2550 M Street NW, Washington, DC 20006, 202-457-7690.

3. *Friends of Iwo Jima v. National Capital Planning Comm'n*, Civil Action No. 97-1467-A (EDVA).

In a highly publicized case, plaintiffs (the citizen group "Friends of Iwo Jima" and Congressman Gerald Solomon) alleged that various government agencies had violated administrative procedural rules when they approved the placement of the Air Force Memorial near the Iwo Jima Memorial. The plaintiffs alleged that the agency's decision violated the Commemorative Works Act, and was infected with procedural error. Ruling on cross-motions for summary judgment, Judge Albert V. Bryan, Jr. determined that the agency had not violated administrative rules and that it had provided adequate notice of its planned action and complied with all procedural rules. As lead counsel, I represented the four government agencies through all aspects of the litigation from 1998 to 1999, including the appeal to the United States Court of Appeals for the Fourth Circuit.

Plaintiff's counsel: Thomas M. Buchanan, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005, 202-371-5700.

Counsel for Air Force Memorial Foundation: Mitchell Berger, Patton Boggs, 2550 M Street, NW, Washington, DC 20006, 202-457-5601.

4. *Hunt Building Corporation v. United States and Keller/Catellus Fort Carson, LLC*, Civil Action No. 97-1706-A (EDVA).

Plaintiff alleged that the Department of the Army had failed to comply with various

government procurement statutes and regulations. Specifically, the plaintiff alleged that the agency provided more information to the company ultimately awarded the contract than it provided to the plaintiff, and that the government improperly refused to engage in substantive discussions or to permit the plaintiff to submit a best and final offer in response to the solicitation. Plaintiff filed a motion for temporary and preliminary injunction against the award of this multi-million dollar contract for government housing. Judge Claude M. Hilton determined that, under the terms of the solicitation, the agency properly awarded the contract on the basis of initial offers without clarifications or discussions. As lead counsel, I handled all aspects of the litigation from 1997 to 1998.

Counsel for Plaintiff: David Hazelton, Lathan & Watkins, 1001 Pennsylvania Avenue, NW, Suite 1300, Washington, DC 20004, 202-637-2200.

5. *Hughes Missile Systems, Co. v. U.S. Department of the Air Force*, Civil Action No. 96-937-A (EDVA).

Plaintiff sought a preliminary injunction in the Eastern District of Virginia to cease performance under two contracts issued for the initial phase of the Joint Air-to-Surface Standoff Missile Program (known as the JASSM program) involving contracts worth an estimated \$3 billion pending resolution of the GAO protest decision, i.e., seeking to override the stay issued pursuant to the Competition in Contracting Act. The district court judge determined that the plaintiff had failed to establish the need to override the stay. I represented the United States, handling all aspects of the litigation in the Eastern District of Virginia in 1996.

Counsel for Plaintiffs: Thomas D. Yannucci, Kirkland & Ellis, 655 15th Street, NW, Suite 1200, Washington, DC 20005, 202-879-5000; Scott Arnold, (no current business contact information available); David V. Anthony (no current business contact information available).

6. *Logan v. United States*, Civil Action No. 98-1415-A (EDVA).

Plaintiff asserted claims under the Federal Tort Claims Act and under common law for wrongful arrest, assault, battery, and intentional infliction of emotional distress. Mr. Logan's claims arose from an altercation with a Secret Service agent. Judge Gerald Bruce Lee rejected all claims after hearing all evidence at trial. As sole counsel, I handled all aspects of the litigation from 1998 to 1999.

Counsel for Plaintiff: Mark Petrovich, Martin, Arif & Petrovich, 8001 Braddock Road, Suite 105, Springfield, VA 22151 (no phone number available).

7. *Wheatley v. United States*, Civil Action 98-580-A (EDVA).

Plaintiff-mother alleged that military guards at the post entry point at Fort Belvoir acted negligently when they stopped plaintiff and her daughter, who had suffered an

asthma attack at home, attempted treatment, and called for emergency transport. The daughter subsequently died. Plaintiff filed suit under the Federal Tort Claims Act. Judge Claude M. Hilton granted the government's motion for summary judgment, in which we argued that the government guards were protected by the Good Samaritan Act. As lead counsel defending this action, I handled all aspects of the litigation from 1998 to 1999. The United States Court of Appeals for the Fourth Circuit affirmed the district court decision.

Counsel for Plaintiff: Michael J. Miller, Miller & Associates, 809 Cameron St., Alexandria, VA 22314 (no current business contact information available).

8. *Medina v. United States*, Civil Action 99-1498-A (EDVA).

Plaintiff, a former diplomat, asserted a claim under the Federal Tort Claims Act against INS agents who arrested and deported him based upon the INS's interpretation that plaintiff's conviction for criminal assault constituted a "crime against moral turpitude." The district court concluded that plaintiff could not present a valid claim under the Federal Tort Claims Act. As lead counsel, I handled all aspects of the litigation at the trial level in 2000.

Counsel for Plaintiff: Edward S. Rosenthal, Rosenthal Rich & Costle, LLP, 1317 King Street, Alexandria, VA 22314, 703-836-7441.

9. *Seldowitz v. Office of the Inspector General, U.S. Department of State*, Civil Action 99-1031-A (EDVA).

Plaintiff, a career foreign service officer, alleged inaccuracies in his personnel records that led to a civil prosecution for fraud. Plaintiff entered into a settlement agreement with the government in which he agreed to pay restitution to the government for overpayment of per diem, but pursued an action pursuant to the Privacy Act, seeking correction of the records. I handled the case at both the trial level and on appeal, from 1999 to 2000. Judge Gerald Bruce Lee granted our motion for summary judgment, in which we asserted that the records correctly reflected the actions that resulted in the settlement. The case was remanded by the Fourth Circuit in part to permit discovery related to a limited category of the records. I did not participate in the case on remand because I had joined the bench.

Counsel for Plaintiff: Andrew Grosso, Grosso & Associates, 1101 30th Street, NW, Washington, DC 20007.

10. *Tilden v. George J. Tenet, Director of Central Intelligence, Central Intelligence Agency*, Civ. No. 00-987-A (EDVA).

Plaintiff alleged discrimination in this Title VII case against the CIA. I represented the CIA and filed a motion to dismiss based upon the assertion of the state secrets privilege by the Director, which presented the first time the state secrets privilege had

been ever asserted in the Eastern District of Virginia in a Title VII case. Judge Claude M. Hilton determined that the state secrets privilege had been properly applied in this instance and dismissed the case. As lead counsel, I handled all aspects of the litigation in 2000.

Plaintiff's Counsel W. Steven Paleos, Paleos & Krieger, PC, 803 Cameron Street, Alexandria, VA 22314 (703) 519-7233.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to my litigation practice, during my time as a military lawyer, I provided legal advice to commanders and military members in a number of subject matter areas, including federal personnel law, military justice, law of armed conflict, rules of engagement, and international issues. For example, General David Wherley, the Commander of the D.C. National Guard, sought my advice upon receiving an order from the military representative from the White House related to the events on September 11.

I have never performed any lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

From April 2012 to the present, I have co-taught the Craft of Judging at the George Washington University School of Law. The focus of this course is current issues in judicial ethics, judicial administration, and the trial and appellate process. Topics include standard of review, statutory interpretation, and the role of precedent. This course is required for students enrolled in a judicial placement. A syllabus is attached.

From January 2012 to the present, I have co-taught a course entitled the Performance of Government Contracts at the George Washington University School of Law. The focus of this course is the discussion of the substantive problems that most frequently arise during the performance of government contracts, including how to interpret specifications and the most generally used contract clauses. We analyze the methods that can be used by the parties to a government contract to obtain legal relief, including detailed coverage of the disputes procedure, actions for breach of contract, and forms of equitable and extraordinary relief. A syllabus is attached.

From September 2008 until the present, I have taught an advanced legal writing course at

the George Washington University School of Law. The focus of the course is legal scholarship and the students are required to produce an original piece of legal scholarship. A copy of the syllabus is attached.

From 1994 through 2001, I taught Introduction to Paralegal Studies at the University of Maryland, University College, through the Distance Learning Program. The University of Maryland no longer offers a certificate in paralegal studies. I taught introduction to law for paralegals, which offered an introduction to the law with a focus on the role of the paralegal in the legal environment. I do not have a copy of the syllabus for this program.

From 1998 to 1990, I taught at the Aviation Law and Aviation Insurance Law, Embry-Riddle Aeronautical University (graduate program). These courses were available for military members stationed in the United Kingdom pursuing a graduate degree. I taught basic administrative law, as related to aviation law, and included concepts in topics such as contracts, torts, property, and criminal law common law concepts. Aviation Insurance Law included more focus upon the underlying concepts for insurance. I do not have a copy of the syllabus.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not have any arrangements for deferred income or future benefits from previous business arrangements.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments, or agreements to pursue outside employment during service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am unaware of any individuals, family or otherwise, that are likely to present potential conflicts of interest. As a judge before the Civilian Board of Contract Appeals, I am currently responsible for cases for which the United States Court of Federal Claims possesses concurrent jurisdiction. If confirmed, I would recuse myself from all cases in which I was either directly or indirectly involved during my tenure with the Civilian Board of Contract Appeals. For matters handled by the Civilian Board of Contract Appeals after my departure, I would apply the standards of 28 U.S.C. 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine whether to recuse in other matters.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would consult rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. 455 and the Code of Conduct for United States Judges, and based on that consultation, I would compile a comprehensive list of matters for easy flagging of potential conflicts of interest. In close cases, I would consult with other judges and persons designated by the court or judicial organizations to obtain advice on such questions as they arise.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Mindful of the limitations of providing pro bono representation as an administrative judge, the focus of my pro bono efforts have been to mentor law students in various voluntary bar activities. For example, I have participated in the American Bar Association Judicial Division Judicial Mentor Program for a few years. This program introduces minority law students to the value in pursuing a judicial clerkship.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In early 2013, I sent my resume to an official with the White House Counsel's Office to express my interest in serving on the Court of Federal Claims. On February 19, 2014, an official from the White House Counsel's Office called me to discuss my interest in the position. Since March 4, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 7, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 21, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Somers, Jeri K.	2. Court or Organization U. S. Court of Federal Claims	3. Date of Report 5/21/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 5/21/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2013 to 5/2/2014
7. Chambers or Office Address 1800 M Street, NW Washington, DC 20036		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Adjunct Professor	George Washington University School of Law
2. Budget Officer	American Bar Association Public Contract Law Section
3. US Lacrosse Official	Independent Contractor
4. Mediator/Arbitrator	Independent Contractor
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT
 Page 2 of 6

Name of Person Reporting	Date of Report
Somers, Jerl K.	5/21/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <small>(yours, not spouse's)</small>
1. 2012	GWU Law School, Teaching	\$11,000.00
2. 2013	GWU Law School, Teaching	\$11,974.00
3. 2013	Parkland Health and Hospital System, Dallas, Texas, Arbitration	\$60,000.00
4. 2013	US Lacrosse (Refpay), Officiating	\$2,245.00
5. 2014	GWU Law School Teaching	\$4,420.80
6.		

B. Spouse's Non-Investment Income *- If you were married during any portion of the reporting year, complete this section.
(Dollar amount not required except for honoraria.)*
☒ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS *-- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
 Page 3 of 6

Name of Person Reporting	Date of Report
Somers, Jerl K.	5/21/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

Page 4 of 6

Name of Person Reporting	Date of Report
Somers, Jeri K.	5/21/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. USAA Aggressive Growth Fund	A	Dividend	J	T					
2. USAA Virginia Bond Fund	A	Dividend	J	T					
3. USAA Financial Services Institution (accounts)	A	Interest	J	T					
4. Pentagon Federal Credit Union (accounts)	A	Interest	J	T					
5. IRA #1	D	Int./Div.	N	T					
6. - American Funds IRA Growth Fund of America									
7. - American Funds IRA American Fundamental Investors Class C									
8. - American Funds IRA American Small Cap World Fund Class C									
9. - American Funds IRA Euro Pacific Growth Fund Class C									
10. - American Funds IRA Capital World Growth and Income Fund Class C									
11. USAA Life Insurance Company: Flexible Premium Adjustable Life	A	Interest	L	T					
12. Virginia Prepaid Education Program		None	K	T					
13. Virginia Education Savings Trust (Potomac Portfolio)	A	Int./Div.	K	T					
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$115,000 or less (See Columns C1 and D3)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Marker	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

FINANCIAL DISCLOSURE REPORT
Page 5 of 6

Name of Person Reporting	Date of Report
Somers, Jeri K.	5/21/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT
Page 6 of 6

Name of Person Reporting	Date of Report
Somers, Jeri K.	5/21/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Jeri K. Somers*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		6	500	Notes payable to banks-secured (auto)			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		431	998	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		739	578
Real estate owned – see schedule	1	081	912	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance			814				
Other assets itemize:							
Thrift Savings Plan		368	276				
				Total liabilities		740	346
				Net Worth	1	249	154
Total Assets	1	989	500	Total liabilities and net worth	1	989	500
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

American Funds Capital World Growth & Income Fund	\$ 41,266
American Funds EuroPacific Growth Fund	61,608
American Funds Fundamental Investors Fund	109,868
American Funds Growth Fund of America	100,881
American Funds SMALLCAP World Fund	67,711
USAA Aggressive Growth Fund	1,749
USAA Virginia Bond Fund	1,232
Virginia Education Savings Trust (Potomac Portfolio)	16,002
Virginia Prepaid Educational Program	31,681
Total Listed Securities	<u>\$ 431,998</u>

Real Estate Owned

Personal residence	\$ 1,031,912
Time share (1/3 owner)	50,000
Total Real Estate Owned	<u>\$ 1,081,912</u>

Real Estate Mortgages Payable

Personal residence	\$ 691,346
Home Equity Line of Credit	27,377
Time share (1/3 owner)	20,855
Total Real Estate Mortgages Payable	<u>\$ 739,578</u>

AFFIDAVIT

I, Jerri Kaylene Somers, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

22 May 2014
(DATE)

Jerri Kaylene Somers
(NAME)

Ann Shetler
(NOTARY)



500

**Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate**

Before the Committee on the Judiciary regarding the Nominations of:

*Pamela Harris, to be United States Circuit Judge for the Fourth Circuit
Pamela Pepper, to be United States District Judge for the Eastern District of
Wisconsin*

*Brenda K. Sannes, to be United States District Judge for the Northern District of
New York*

*Patricia M. McCarthy, to be a Judge of the United States Court of Federal Claims
Jeri Kaylene Somers, to be a Judge of the United States Court of Federal Claims*

June 24, 2014

Mr. Chairman,

First, I'd like to congratulate today's nominees and their families. It's an important milestone in all of your careers and I welcome you here today.

Today, as is our custom for nominations hearings, we are hearing from five nominees: one to the Fourth Circuit, two to District Courts and two to the Court of Federal Claims.

This Committee continues to process nominees very quickly. For example, today's nominee to the Fourth Circuit has been pending for only 47 days. By comparison, President Bush's Circuit nominees waited, on average, 246 days for a hearing, more than five times the wait for this nominee.

In fact, quite a few of President Bush's Circuit Court nominees never received a hearing. For example, in 2007, President Bush tried to fill the Circuit seat that Professor Harris has been nominated to, when he nominated the Maryland U.S. Attorney Rod Rosenstein. However, Mr. Rosenstein's nomination lacked support from the home-state Senators and his nomination didn't move forward.

I've reviewed the records of today's nominees carefully. Professor Harris has an extensive record speaking on important constitutional issues and has written appellate briefs on several significant cases.

Obviously, how a nominee views the Constitution, and the Court's role in interpreting the document, is of great importance. I will say that I have some concern with aspects of Professor Harris' record.

I'm interested in learning more about what Professor Harris means when she writes about "progressive readings" of the Constitution and her views on originalism. I look forward to discussing some of my concerns with her today in this public forum.

Nominations hearings are vitally important in helping Senators as we vote to fill seats in the Judiciary with judges who we hope will fairly and impartially follow the law and who are not beholden to a conservative or liberal bias. I give each nominee that comes before me careful and individual consideration. And I look forward to hearing from the nominees today. Welcome to you all.

**Senator Chuck Grassley
Questions for the Record**

**Pamela Harris
Nominee, United States Circuit Judge for the Fourth Circuit**

1. At your hearing, I asked you the following:

“On same-sex marriage issues, you are quoted as saying ‘Justice Kennedy should be changing the same way the whole country is changing regarding same-sex marriage.’ First question: Why do you believe a Supreme Court justice should change his or her views and therefore judicial interpretation based upon public sentiment if we have a judiciary that’s supposed to do, as you just said, apply precedent and fact to deciding the case?”¹

You responded:

“Senator, thank you for that question, I am happy to have an opportunity to clarify. That was a comment I made to a journalist, I’m often asked as a Supreme Court litigator to sort of opine and speculate about issues before the Court. I would never suggest that a Justice of the Supreme Court, or any judge, should change his or her opinions based on public opinion. That is not the way I view the role of the judge. I am confident that is not the way that Justice Kennedy views his role, any other judge views his or her role. When we talk as commentators about the individual views of justices we are usually talking about their written record as it has developed through their majority opinions, their separate writings. And what I was doing in that comment is likely – I had been talking about Justice Kennedy’s distinct record on issues involving classifications based on sexual orientation, and predicting where those legal views might bring him on future cases.”²

But the original context strongly suggests that you were referring to evolving public sentiment. The full context of the question is as follows:

“Whatever the case, given Justice Kennedy’s track record on gay rights, it won’t be surprising if he eventually caps his career with a landmark decision ensuring that gay couples throughout the nation can wed, Harris said. ‘Justice Kennedy should be changing the same way the whole country is changing,’ she said.” (emphasis added)³

You said in the hearing that you had been “talking about Justice Kennedy’s distinct record on issues involving classifications based on sexual orientation, and predicting where

¹ *Judicial Nominations Hearing Before the S. Comm. on the Judiciary*, 113th Cong. __ (2014) (statement of Sen. Charles E. Grassley, Ranking Member, S. Comm. on Judiciary).

² *Judicial Nominations Hearing Before the S. Comm. on the Judiciary*, 113th Cong. __ (2014) (statement of Pamela Harris, Nominee).

³ Jeff Overley, *Dubbed ‘first gay justice,’ Kennedy may not be done yet*, Law 360, June 26, 2013, available at <http://www.law360.com/articles/453184/dubbed-first-gay-justice-kennedy-may-not-be-done-yet>.

those legal views might bring him on future cases.” But, if that were the case, and you would not base your decisions on changes in public opinion, why did you make the normative claim that Justice Kennedy “should” be changing in the same way?

2. At your hearing, I asked you:

“You also stated that you thought that ‘the tide of history is going one way,’ and that you didn’t think (well that’s the end of that part of the quote) – and that you didn’t think that the Justices ‘wanted to be on the wrong side of that.’ Do you believe it’s appropriate for a judge to take into consideration what ‘side of history’ their judicial interpretations should be?”⁴

You responded:

“Again, no, Senator, I do not, and I did not mean to suggest that. I think there is another sentence in the article that makes clear that – the context makes clear that – what I was talking about was the notion of judicial restraint, that courts, the Supreme Court, might want to be especially cautious on social issues when the political branches and political institutions sort of deeply and rapidly engaged in those issues, that the courts might want to take small steps, not take big steps, and leave as much as possible to the democratic process.”⁵

Printed below is the full context of your quotation:

“She [Harris] thinks Chief Justice John G. Roberts Jr. will want to be cautious about the court taking a bold stand on an issue in which public opinion seems to shift quickly. Harris is hardly disinterested, she noted: She spent the past month working to see same-sex marriage approved in Maryland. ‘I think the tide of history is going one way,’ she said. ‘I don’t think the justices want to be on the wrong side of that.’”⁶

You said in the hearing that in your comments to the *Washington Post*, printed on November 13, 2012, that you were talking about “the notion of judicial restraint, that courts, the Supreme Court, might want to be especially cautious on social issues when the political branches and political institutions sort of deeply and rapidly engaged in those issues, that the courts might want to take small steps, not take big steps, and leave as much as possible to the democratic process.” You also said in response to my first question that you “would never suggest that a justice of the Supreme Court, or any judge, should change his or her opinions based on public opinion.”

⁴ Grassley, *supra* note 1 (quoting Robert Barnes, What did Supreme Court hear about same-sex marriage on Election Day?, WASH. POST, November 13, 2012.)

⁵ Harris, *supra* note 2.

⁶ Robert Barnes, What did Supreme Court hear about same-sex marriage on Election Day?, WASH. POST, November 13, 2012.

- a. Do you believe that when courts are “especially cautious on social issues when the political branches and political institutions sort of deeply and rapidly engaged in those issues,” they are considering public opinion as they arrive at a judicial decision?
- b. If not, why not?
- c. Do you believe it is ever appropriate for judges to adjust the deference they provide to the political branches according to changes in the public salience of particular issues?

3. At your hearing, I asked you:

*“You moderated a panel on the Supreme Court’s upcoming term during which you said ‘the Constitution evolves, it has to keep pace with changes in the factual predicates, and yes, our readings of constitutional provisions ought to change and evolve in light of circumstances on the ground like that.’ ... I’d like to know how you intend to decide what changed particular societal circumstances you will consider if confirmed. Let me say it this way, it’s clear from your writings and speeches that you’re talking about shifting public opinion rather than simply technological advances. For example, in the introduction of a book, *It Is a Constitution We Are Expounding*, you wrote, ‘Justice Brennan explores the importance of the judge’s obligation to speak for the community—the current community—in interpreting the Constitution.’ You’ve also discussed what you call ‘constitutional legitimacy’ coming from social movements. The problem with this view is that it leads to a judge’s imposing personal views into cases. Justice Scalia expressed it this way well in dissent in regarding the 8th Amendment, writing ‘Of course the risk of assessing evolving standards is that it is all too easy to believe that evolution has culminated in one’s own views.’ Once you start considering shifting public opinion, you’re essentially reducing constitutional interpretation to public poll. So assuming you will interpret the Constitution the way that all of your writings suggest – and I know the answers to Senator Coons suggest otherwise – how do you intend to guard against imposing your own views as opposed to what you view as shifting public opinion?”⁷*

You responded:

“Senator, let me start by saying that as a Supreme Court litigator, an appellate litigator, as someone who has specialized in preparing other advocates for their arguments before the Court, I always have been keenly aware of the boundaries of judicial decision-making. And as a litigator, every argument I ever advanced took as its starting point the methodologies that have been used by the Supreme Court and the lower courts and the methodologies that have been approved by those courts. That is how I’ve conducted my

⁷ Grassley, *supra* note 1 (quoting Pamela Harris, Panelist, “Book Discussion: ‘Keeping Faith with the Constitution’ and ‘It is a Constitution We are Expounding: Collected Writings on Interpreting Our Founding Document,’ ” American Constitution Society, May 1, 2009.)

*career. In terms of some of the other comments you have raised, I do not believe it is the role of a judge, ever, to import his or her own personal values into judicial decision-making. In cases in which the Court has looked to things – to social conditions, things like that – what the Court – and again, I would follow the Court’s precedent on this – what they have looked to is objective indicia of such things. They’ve looked to state laws, they’ve looked to common law. They’ve looked to practices in the states. I’m aware of no account of legitimate judicial decision-making that has judges taking public opinion polls or using their own personal preferences to decide cases.”*⁸

Printed below is the full context of your quotations:

*“...at crucial moments for the Constitution, the original framing, the amendments, the Reconstruction period, the history behind the Constitution was very progressive in very important ways. It’s important that the discussion over interpretive method account for this. So I think we do start at a point of some agreement with originalists, in the importance of text and history. But that said, I also think there very badly needs to be a fuller discussion about where you go after that, or in addition to that. About other valid sources of constitutional meaning, things discussed in the excerpts of the volume like constitutional structure, constitutional precedent, the consequences of constitutional rulings, both on the ground and for continuity of legal discourse, and things like values and norms that are rooted in the Constitution or part of constitutional heritage, but whose meaning may change over time, whose application may change over time in response to changed understandings about what a word like equality really means. That’s the kind of discussion that we’re hoping to promote with this volume.”*⁹

“The collection next turns to two excerpts that address the importance of interpreting the Constitution in light of the evolving values of American society. Chapter Eleven, an excerpt from Justice Thurgood Marshall’s “Reflection on the Bicentennial of the U.S. Constitution,” emphasizes the degree to which the Constitution as we know it today has been altered and changed not simply by amendment, but by social movements and the evolution of societal mores since its enactment. His article underscores the importance of a society’s ethical and moral commitments in the development of the Constitution to date, and the importance of continuing to recognize the relevance of such considerations in the future. Similarly in Chapter Twelve, Justice Brennan, discussing his own method of constitutional interpretation, emphasizes the importance of the relationship between the values of contemporary society and the Constitution. While it is important for current Justices to ‘look to the history of the time of framing and to the intervening history of interpretation’ in interpreting the Constitution, ‘the ultimate question must be: What do the

⁸ Harris, *supra* note 2.

⁹ Pamela Harris, Panelist, “Book Discussion: ‘Keeping Faith with the Constitution’ and ‘It is a Constitution We are Expounding: Collected Writings on Interpreting Our Founding Document,’ ” American Constitution Society, May 1, 2009.

words of the text mean in our time?’ This approach is consistent, he asserts, with the ‘transformative purpose of the text:’ ‘Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.’”¹⁰

You said in the hearing that you “do not believe it is the role of a judge, ever, to import his or her own personal values into judicial decisionmaking. In cases in which the Court has looked to things – to social conditions, things like that . . . what they have looked to is objective indicia of such things. They’ve looked to state laws, they’ve looked to common law. They’ve looked to practices in the states. I’m aware of no account of legitimate judicial decisionmaking that has judges taking public opinion polls or using their own personal preferences to decide cases.”¹¹

Yet, in your Introduction to *It Is a Constitution We Are Expounding*, you described the excerpt of Justice Thurgood Marshall’s essay contained therein as “emphasiz[ing] the degree to which the Constitution as we know it today has been altered and changed not simply by amendment, but by social movements and the evolution of societal mores since its enactment. His article underscores the importance of a society’s ethical and moral commitments in the development of the Constitution to date, and the importance of continuing to recognize the relevance of such considerations in the future.”¹² You also described the excerpt of Justice Brennan’s essay as “emphasiz[ing] the importance of the relationship between the values of contemporary society and the Constitution.”¹³

- a. How would you characterize the accounts of judicial decisionmaking described by Justices Brennan and Marshall in *It Is a Constitution We Are Expounding*?
- b. In what sense are the “indicia” they look to “objective”?
- c. Would you model your own jurisprudence on these accounts?

4. At your hearing, Senator Cruz asked you:

“In 2009, at an American Constitution Society panel, you described yourself as “a profoundly liberal person” who sees the Constitution as “a profoundly progressive document.” And you went onto say, “I always feel, unapologetically, you know, left to my own devices, my own best reading of the Constitution, it’s pretty close to where I am.”

¹⁰ IT IS A CONSTITUTION WE ARE EXPOUNDING 11 (Pamela Harris and Karl Thompson, eds.), available at https://www.acslaw.org/pdf/ACS_Expounding_FNL.pdf.

¹¹ Harris, *supra* note 2.

¹² IT IS A CONSTITUTION WE ARE EXPOUNDING, *supra* note 10.

¹³ *Id.*

*Now, given the definition you've just given of judicial activism, those public comments raise some concern. How would you respond to those concerns?"*¹⁴

You responded:

*"Well, Senator, I would respond first, I think, by pointing to my entire professional career, where as Supreme Court and appellate advocate at O'Melveny and Meyers, running the Supreme Court Institute on an entirely non-partisan basis. I have never let any personal views I have, political views I may have affect the discharge of my professional responsibilities. And I would not do that if I were confirmed as a judge."*¹⁵

*"With respect to those specific comments, if I can just give you a little bit of context, they came when I was arguing, basically arguing against audience members who thought that the Constitution should be amended to address certain Supreme Court decisions that they found too conservative. And my point was that commitment to the Constitution actually ought to transcend that kind of political difference—and that was not an appropriate reason for amending the Constitution. I describe myself as liberal just as a matter of context to suggest that even though I might share some of their political commitments, I did not believe the Constitution should be amended for that reason, and that I did believe that commitment to the Constitution transcends politics."*¹⁶

The quote to which Senator Cruz's question referred was preceded by this question from Tom Goldstein:

*"Pam Harris, one of the questions is about social movements, and asks, in essence, is the problem here the failure to produce a just society—one that is inherent in the document of the Constitution that we have. And by trying to create a way of looking at the Constitution that will produce more just results, are we actually distracting social movements away from something that would be better, which is making a better Constitution—whether through constitutional amendment or through projects that involve changing legislation, and the like; how much is there a legitimate concern that we're trying to make the best of a bad situation rather than say, much more radically changing society at its core?"*¹⁷

In response to Mr. Goldstein's question, you said the following:

¹⁴ *Judicial Nominations Hearing Before the S. Comm. on the Judiciary*, 113th Cong. __ (2014) (statement of Sen. Ted Cruz, Ranking Member, S. Comm. on Judiciary) (quoting Pamela Harris, "The ACS National Convention: Keeping Faith with the Constitution," American Constitution Society, June 19, 2009).

¹⁵ Harris, *supra* note 2.

¹⁶ *Id.*

¹⁷ Thomas Goldstein, Moderator, "The ACS National Convention: Keeping Faith with the Constitution," American Constitution Society, June 19, 2009.

*"People often ask (in panels like this): Show me, prove to me that you're doing this honestly, show me where your personal policy preferences diverge from the Constitution. Show me that you're not just reading them to be the same thing. And I always feel unapologetically, you know, left to my own devices, my own best reading of the Constitution, it's pretty close to where I am. Because I think the Constitution is a profoundly progressive document. I think it's born of a progressive impulse. I think particularly, as amended in the Reconstruction era, it is committed to principles like equality and liberty and individual dignity, and I'm a profoundly liberal person so we [the Constitution and I] match up pretty well. I make no apologies for that. I think it's a great document. And I think as amended, and as interpreted, and the method, with the people of good will, applying the methodology that's talked about in this book, it is something we can all be really proud of."*¹⁸

In the hearing, you characterized your previous comments as standing for the proposition that "commitment to the Constitution transcends politics." Further, you characterized your previous comments as "describ[ing] myself as liberal just as a matter of context."

However, on the panel, you said that in response to people who ask you to show "where your personal policy preferences diverge from the Constitution," you "feel unapologetically, you know, left to my own devices, my own best reading of the Constitution, it's pretty close to where I am." You concluded, "I'm a profoundly liberal person, so we [the Constitution and I] match up pretty well."

- a. Was your point on the panel that the Constitution is a progressive document and coincidentally happens to align with your personal policy preferences, or was your point, as you said at the hearing, that commitment to the Constitution transcends politics?
- b. Why did you state that the Constitution and your "personal policy preferences" "match up pretty well"?
- c. What are some of the "personal policy preferences" that you were referring to?
- d. Why does your own best reading of the Constitution align with those "personal policy preferences"?

5. At your hearing, Senator Cruz asked:

"Well, I appreciate your comments clarifying that. Let me ask an additional question. Also in 2009, you criticized liberals for believing that the Warren Court's decisions were 'as liberal as it gets.' And you responded saying 'that's not right.' And you went onto say 'we've stunted the spectrum of legal thought in a way that removes the possibility that

¹⁸ Pamela Harris, Panelist, "The ACS National Convention: Keeping Faith with the Constitution," American Constitution Society, June 19, 2009.

there could've been more progressive readings of the Fourth and Fifth Amendments." Now, as you know, the reaction to the Warren Court's criminal procedure rulings—widely perceived as creating loopholes allowing dangerous criminals back onto the street—was fairly dramatic. And it is unusual for judicial nominees to have taken positions suggesting that the Warren Court was not nearly liberal enough, and it should have been more liberal. Is that your view? I want to understand what your view is on that question."¹⁹

You responded:

*"Senator, that's not my view, and it's also really not what I said. Again, if I can just give you a context on that. I was responding on that panel to an argument that justices perceived as liberal, like Chief Justice Warren, never—and I think the phrase was "had never felt the pain of reaching a constitutional decision that disagreed with liberal views." And the only point that I was making was that several of Chief Justice Warren's criminal procedure decisions had not, in fact, adopted what was being presented as the liberal view. I believe I talked about the Terry case, and that was the only point I was making—that sometimes people assume that because Chief Justice Warren wrote an opinion, it must have been terribly liberal. I was simply pointing out that in the criminal procedure context, Chief Justice Warren wrote opinions that did not adopt what was being advanced as the most pro-defendant or liberal position. It's just a descriptive point about certain criminal procedure decisions."*²⁰

Printed below is the full context of your quotation:

"I sometimes wonder whether when we think about someone like Chief Justice Warren . . . whether we almost have, by now, a stunted sense of what the legal choices really are, what really is a liberal legal outcome, whether we sometimes almost think circularly: Well, if Chief Justice Warren came out that way, that must be as liberal as it gets, whether we're reasoning backwards a little bit, because I think of Chief Justice Warren's work mostly in the criminal procedure area, and I think of some of his biggest decisions like Miranda and Terry, there's pain all over those pages. I think we now think of Miranda as an extremely liberal opinion, but it fell well short of what was being argued in that case, which is not that you have a waivable . . . right to counsel when you're being interrogated, but that there can be no station house interrogation without a lawyer. The Court didn't go there, and I think the pain of that is actually pretty clear on the face of that opinion, same with Terry . . . the argument was, you want to seize someone, frisk someone, throw them up against a wall, you have to have probable cause . . . Court said, no that's okay, reasonable suspicion can be enough, and the pain of that is all over the pages in Terry. And so I worry that sometimes when we look back, particularly at the work of the justices in the 1960s and 1970s, there's almost an inclination to assume that must be as

¹⁹ Cruz, *supra* note 14 (quoting Harris, *supra* note 9).

²⁰ Harris, *supra* note 2.

liberal as it gets. That's not right! I think that we've stunted the spectrum of legal thought in a way that removes the possibility that there could have been more progressive readings of the Fourth Amendment and the Fifth Amendment. And I know this area best, but I would assume that the same is true in other areas that are covered in your book."²¹

Your response does not address the normative positions that you took—above and beyond a mere “descriptive point.” Please describe, in detail, the “more progressive readings of the Fourth and Fifth Amendments” that, in your view, would properly remedy the “stunted . . . spectrum of legal thought.”

6. In response to the first question I asked at your nomination hearing, you stated:

*“I would never suggest that a justice of the Supreme Court, or any judge, should change his or her opinions based on public opinion. That is not the way I view the role of the judge.”*²²

Yet, your record appears to make clear your view that, in your words, “changing public understanding” “drives that evolving understanding” of the Constitution. For instance:

On a panel discussing *It is a Constitution We Are Expounding*, you claimed that, as an editor, you “hope[d] to promote” a “discussion” about sources of constitutional meaning:

*“I also think there very badly needs to be a fuller discussion about where you go after [constitutional text and history], or in addition to [constitutional text and history]. About other valid sources of constitutional meaning, things discussed in the excerpts of the volume like constitutional structure, constitutional precedent, the consequences of constitutional rulings, both on the ground and for continuity of legal discourse, and things like values and norms that are rooted in the Constitution or part of constitutional heritage, but whose meaning may change over time, whose application may change over time in response to changed understandings about what a word like equality really means.”*²³

While on a panel on “The Living Constitution,” you asserted:

“They [constitutional provisions] take their meaning—and they should take their meaning—from what comes after . . . and this is my source of legitimacy . . . from what the People do at these critical junctures—the civil rights movement, the women's movement, the gay rights movement—when they reconstitute what it is we're talking about when we

²¹ Harris, *supra* note 9.

²² Harris, *supra* note 2.

²³ *Id.*

talk about American constitutional tradition, when we say words like equality and liberty, when we change what they mean because what the people themselves have done."²⁴

And while on a 2009 ACS panel, you stated:

"Through the commitment and sacrifice of members of the public, it both expresses an evolving and changing public understanding of a constitutional principle—something from the Constitution, like equality—it both expresses that evolving understanding and drives that evolving understanding."²⁵

- a. Please explain how you distinguish social movements as a source of constitutional change that "drives evolving understanding," which you have repeatedly embraced, from changes in "public opinion," that you expressly rejected at your hearing.
- b. If confirmed, how would you identify which social movements "reconstitute what it is we're talking about when we talk about American constitutional tradition"?

You have also strongly rejected "originalism" as a method of constitutional interpretation:

"I just don't think that any account of the Constitution that even seems to—even seems to—privilege the Constitution as it was originally ratified, or even what people remember as it was amended particularly during the Reconstruction period, I don't think it's consistent with the way most people do—and the way we should—think about the Constitution. . . . And that's why I'm not an originalist, even now."²⁶

- c. Please explain why you reject originalism as an interpretive method.
 - d. Please identify cases where the Supreme Court used originalism as an interpretive method with which you disagree.
7. You represented *Sumnum* in *Pleasant Grove City v. Sumnum*²⁷, and the Supreme Court rejected the argument you advanced 9-0. After the Supreme Court rejected your argument, you wrote that the case was an "Establishment Clause 'victory,'" and "should provide significant assistance to plaintiffs challenging religious displays under the Establishment Clause."²⁸ In the same article, you also argued that "there is an important distinction between the mere display of a Ten Commandments monument [which the Supreme Court upheld in *Van Orden v. Perry*²⁹], and the denial

²⁴ Pamela Harris, Panelist, "Our Enduring Constitution: Applications and Interpretations," American Constitution Society, June 14, 2008.

²⁵ Harris, *supra* note 18.

²⁶ Harris, *supra* note 24.

²⁷ 555 U.S. 460 (2009).

²⁸ Pamela Harris, *Pleasant Grove v. Sumnum and the Establishment Clause: Giving with One Hand, Taking with the Other?*, 46 WILLAMETTE L. REV. 677, 680 (2010).

²⁹ 545 U.S. 677 (2005).

of a request by another religious group for ‘equal access’ for its own religious message.”³⁰

- a. After the Supreme Court’s holding in *Salazar v. Buono*³¹ and other Establishment Clause cases decided since *Sumnum*, do you still believe *Sumnum* increased plaintiffs’ ability to challenge religious displays under the Establishment Clause?
- b. Under current Supreme Court precedent, do you believe that a city which displayed a Ten Commandments memorial and did not allow all other religious groups to erect whatever religious displays they might like would be in violation of the Establishment Clause? If not, is that a change in the position you articulated in your law review article?
- c. What do you believe the Establishment Clause is in place to protect?

8. In an ACSBlog post, you wrote:

*“Will the Court stop protecting women from anti-choice politicians, and leave women’s decisions about whether or not to have an abortion subject to ever-greater government restriction and control? These questions undoubtedly will be (and should be) front and center as the Senate and the Nation debate who should replace Justice O’Connor.”*³²

- a. What restrictions on abortion are constitutional?
- b. Should abortion be front and center as the Senate and the Nation debate whether to confirm you to the Fourth Circuit?
- c. You critiqued the Supreme Court in *Gonzales v. Carhart*³³ for essentially saying “you could find one guy to say ‘I don’t know if it’s safe’ . . . to create medical uncertainty that will allow state regulation.”³⁴ You also described that decision, which addressed a ban on partial birth abortion, as involving “late-ish” term abortion.³⁵ Do you believe the Court wrongly decided *Gonzales v. Carhart*, as your comments appear to make clear?

9. In *Stenberg*, the Court held that a Nebraska law criminalizing partial-birth abortion violated the Due Process clause. Congress then responded by passing the Partial-Birth Abortion Ban which fixed the deficiencies the Supreme Court had found with the Nebraska law in *Stenberg*. In *Gonzales*, the Court distinguished the Nebraska law with the new federal law and upheld the Partial-Birth Abortion Ban.

³⁰ Harris, *supra* note 28, at 684.

³¹ 559 U.S. 700 (2010).

³² Pamela Harris and Dawn Johnsen, *What O’Connor’s Retirement Means for Reproductive Liberty*, ACSBLOG (July 5, 2005), <http://www.acslaw.org/acsblog/guest-bloggers-what-oconnors-retirement-means-for-reproductive-liberty>.

³³ 550 U.S. 124 (2007).

³⁴ Pamela Harris, Moderator, “2013-2014 Supreme Court Term Preview,” American Constitution Society, September 16, 2013, available at <http://www.c-span.org/video/?315036-1/supreme-court-20132014-term-preview/> (discussing the pending contraceptive mandate cases).

³⁵ *Id.*

- a. The ban on partial-birth abortion – a procedure Congress determined had a “disturbing similarity to the killing of a newborn infant” (*Gonzales v. Carhart*, quoting Congressional Findings³⁶) – was upheld by the Supreme Court in *Gonzales v. Carhart*. Have your views on partial-birth abortion evolved at all since the time you criticized the Court’s *Gonzales* decision?
 - b. What are the differences in the two laws, the Nebraska law and the federal law?
 - c. In your blog post on this topic, you wrote that “the Court may have an institutional interest in standing by its prior decision and protecting its prerogatives against what it likely will see as encroachment by Congress.”³⁷ What did you view as the Court’s prerogatives in this case?
10. David Fontana wrote an editorial in the *New Republic* on your nomination, “Liberals should rally behind Harris’s nomination, because she embodies, more than any other Obama judicial nominee, all three of the important qualities I previously described for federal judges: She will be a sympathetic vote to liberal causes; she has a great professional network that will give rise to the next generation of liberal legal elites; and she will be an eloquent and inspiring champion of liberal jurisprudence.”³⁸ How do you respond to this characterization of your nomination?
 11. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”³⁹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
 - b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more

³⁶ 550 U.S. 124, 158 (2007) (quoting Congressional Findings ¶ (14)(L)).

³⁷ Pamela Harris and Dawn Johnsen, *Supreme Court Preview: Abortion and the “Health Exception,”* ACSBLOG (February 20, 2007), <http://www.acslaw.org/acsblog/supreme-court-preview-abortion-and-the-health-exception/>.

³⁸ David Fontana, *Obama Has Started Making Major Progress on Nominating Judges—and This Is His Most Important One Yet*, NEW REPUBLIC (May 13, 2014), <http://www.newrepublic.com/article/117747/pamela-harris-fourth-circuit-court-why-liberals-should-cheer-her>.

³⁹ *United States v. Windsor*, 133 S.Ct. 2675, 2696 (2013).

detail, has been treated as being within the authority and realm of the separate States.”

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
12. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
 13. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

14. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
15. Do you think judges should consider the “current preferences of the society” when ruling on a constitutional challenge? What about when seeking to overrule longstanding Supreme Court or circuit precedent?
16. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?
17. Do you believe that the death penalty is an acceptable form of punishment?
18. In *Brown v. Entertainment Merchants Association*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.
 - a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?
 - b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?
19. What is the most important attribute of a judge, and do you possess it?
20. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
21. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
22. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
23. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

24. Please describe your understanding of the workload of the Fourth Circuit. If confirmed, how do you intend to manage your caseload?
25. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?
26. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
27. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work and interaction with colleagues on the Court?
28. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?
29. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".
 - a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.
30. Please describe with particularity the process by which these questions were answered.
31. Do these answers reflect your true and personal views?

**Senator Grassley
Questions for the Record**

**Pamela Pepper,
Nominee, U.S. District Judge for the Eastern District of Wisconsin**

1. What is the most important attribute of a judge, and do you possess it?
2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
4. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
5. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
6. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
7. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community,” in determining the meaning of the Constitution? Please explain.
8. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
9. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
10. If confirmed, how do you intend to manage your caseload?
11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
12. As a bankruptcy judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

13. If confirmed, how do you believe your experience as a bankruptcy judge will help you as a federal district judge?
14. What do you anticipate will be the greatest challenge transitioning from a federal bankruptcy court's docket to a federal district court's docket?
15. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?
16. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
 - b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

² *Id.* 2689-2690.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁵
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.
18. Please describe with particularity the process by which these questions were answered.
 19. Do these answers reflect your true and personal views?

**Senator Grassley
Questions for the Record**

**Brenda Kay Sannes,
Nominee, U.S. District Judge for the Northern District of New York**

1. Your responses to the Committee's questionnaire indicate that 90% of your practice has consisted of prosecuting criminal cases The District to which you have been nominated handled well over twice as many civil cases as criminal cases in 2012.¹
 - a. How are you preparing to handle the civil cases that will make up a majority of your docket if you are confirmed?
 - b. Can you tell me a little about the extent of your familiarity with the Federal Rules of Civil Procedure?
2. Your responses to the Committee's questionnaire provided little in the way of examples of your legal writing. Is there anything further you could share with the Committee to ease any doubts that may exist about whether your experience has prepared you for a lifetime appointment?
3. In the recently-decided *Abramski v. United States*,² the Supreme Court was divided over how and when to apply the rule of lenity in the construction of criminal statutes. Under which circumstances would you apply the rule, if at all, and if so, how would you do so?
4. If you were to find yourself sentencing a defendant who you thought was innocent, or who had been convicted under a statute you considered unjust, how would you go about sentencing the defendant? Would these concerns factor into your determination?
5. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."³

¹ 1, 740 civil cases were filed in the Northern District of New York during the 12-month period ending in March 31, 2013, see *Federal Judicial Center Caseload Statistics 2013*, Table C, available at <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/C00Mar13.pdf>, and just 514 criminal cases were filed in the Northern District of New York during the 12-month period ending in March 31, 2013, see *Federal Judicial Center Caseload Statistics 2013*, Table D, available at <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/D00CMar13.pdf>.

² 134 S.Ct. 421 (2013).

- i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”⁴
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”⁵
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁶
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?

³ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

⁴ *Id.* 2689-2690.

⁵ *Id.* 2691.

⁶ *Id.* (internal citations omitted).

- e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁷
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
6. What is the most important attribute of a judge, and do you possess it?
7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
9. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
12. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.
13. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
14. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
15. If confirmed, how do you intend to manage your caseload?

⁷ *Id.* (internal citations omitted).

16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
17. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
18. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".
 - a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.
19. Please describe with particularity the process by which these questions were answered.
20. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record
Patricia M. McCarthy**

Nominee, Judge for the U.S. Court of Federal Claims

1. Your Senate Questionnaire indicates that your time practicing before the Court of Federal Claims was largely devoted to a single contract termination case. In addition to contract cases, the Court of Federal Claims adjudicates cases pertaining to tax, Fifth Amendment Takings, military and civilian pay, and many other types of claims against the federal government brought by many diverse claimants.
 - a. Do you have any experience in these other areas within the jurisdiction of the Court of Claims?
 - b. What assurances or evidence can you give the Committee that you will be able to preside over the wide range of cases that arise in the Court of Federal Claims?
2. As an attorney for the Department of Justice it is your responsibility to zealously represent the United States. If confirmed, how do you plan to transition to neutrally presiding over cases?
3. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
4. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
5. What is the most important attribute of a judge, and do you possess it?
6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
7. If confirmed, how do you intend to manage your caseload?
8. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
9. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.
10. In your view, are there particular challenges facing the Court of Claims? Do you see any areas where improvement is needed?

**Senator Chuck Grassley
Questions for the Record
Jeri K. Somers**

Nominee, Judge for the U.S. Court of Federal Claims

1. You have served as a judge in a variety of settings, including the U.S. Air Force, the U.S. Department of Transportation Board of Contract Appeals, and the U.S. Civilian Board of Contract Appeals. If confirmed, what lessons or principles have you learned from these experiences that you will take with you to the Court of Claims?
2. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
3. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
4. What is the most important attribute of a judge, and do you possess it?
5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
6. If confirmed, how do you intend to manage your caseload?
7. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
8. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.
9. In your view, are there particular challenges facing the Court of Claims? Do you see any areas where improvement is needed?

**Senator Chuck Grassley
Questions for the Record**

**Pamela Harris
Nominee, United States Circuit Judge for the Fourth Circuit**

1. In your response to question 2(b) of my questions for the record, you said that you “believe that the Supreme Court appropriately may exercise restraint in a prudential sense, deciding cases narrowly – what I referred to as ‘tak[ing] small steps, not [] big steps’ – so that contentious social issues are resolved to the greatest extent possible by the democratic process.”¹ But in the same response, you also said that “in issuing a decision, whether narrow or broad, the role of any court is to apply law and precedent to the facts, without regard to public opinion on the underlying issue or whether that decision will be popularly received.”²

You stated that it is appropriate for courts to ensure “that contentious social issues are resolved to the greatest extent possible by the democratic process” by “deciding cases narrowly.” How should courts determine whether cases implicate “contentious social issues” if they are to decide cases “without regard to public opinion”?

2. In your response to question 4(b) of my questions for the record, you said that “‘the preferences’ to which [you] w[ere] referring” were “principles like equality and liberty and individual dignity.”³ While on an ACS panel, you stated that “[p]eople often ask: show me, prove to me that you’re doing this honestly, show me where your *personal policy preferences* diverge from the Constitution. Show me that you’re not just reading them to be the same thing”⁴ (emphasis added).

- a. Were you suggesting that people ask you to show where “principles like equality and liberty and individual dignity,” which “virtually all of us” agree with, “diverge from the Constitution”?
- b. Where do your personal beliefs as to what government ought to do diverge from “[your] own best reading of [what] the Constitution” requires, permits, or prohibits?

¹ Pamela Harris, Response to Sen. Grassley’s Questions for the Record, at 2(b).

² *Id.*

³ Pamela Harris, Response to Sen. Grassley’s Questions for the Record, at 4(b).

⁴ Pamela Harris, Panelist, “The ACS National Convention: Keeping Faith with the Constitution,” American Constitution Society, June 19, 2009 (“People often ask (in panels like this): Show me, prove to me that you’re doing this honestly, show me where your personal policy preferences diverge from the Constitution. Show me that you’re not just reading them to be the same thing. And I always feel unapologetically, you know, left to my own devices, my own best reading of the Constitution, it’s pretty close to where I am. Because I think the Constitution is a profoundly progressive document. I think it’s born of a progressive impulse. I think particularly, as amended in the Reconstruction era, it is committed to principles like equality and liberty and individual dignity, and I’m a profoundly liberal person so we [the Constitution and I] match up pretty well. I make no apologies for that. I think it’s a great document. And I think as amended, and as interpreted, and the method, with the people of good will, applying the methodology that’s talked about in this book, it is something we can all be really proud of.”).

3. Do you believe that “social movements reconstitute what it is we’re talking about when we talk about American constitutional tradition”?⁵ Or is “the only sense in which [you] believe that constitutional provisions or principles evolve” is when “[c]ourts are sometimes called upon to apply those original provisions to new facts or circumstances, and in that sense, their application may change over time”?⁶ Please explain.

⁵ Pamela Harris, Panelist, “Our Enduring Constitution: Applications and Interpretations,” American Constitution Society, June 14, 2008.

⁶ Pamela Harris, Response to Sen. Grassley’s Questions for the Record, at 6(a).

Questions for the Record
Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Senator Chuck Grassley
Questions for the Record

Pamela Harris
Nominee, United States Circuit Judge for the Fourth Circuit

1. At your hearing, I asked you the following:

*"On same-sex marriage issues, you are quoted as saying 'Justice Kennedy should be changing the same way the whole country is changing regarding same-sex marriage.' First question: Why do you believe a Supreme Court justice should change his or her views and therefore judicial interpretation based upon public sentiment if we have a judiciary that's supposed to do, as you just said, apply precedent and fact to deciding the case?"*¹

You responded:

*"Senator, thank you for that question. I am happy to have an opportunity to clarify. That was a comment I made to a journalist, I'm often asked as a Supreme Court litigator to sort of opine and speculate about issues before the Court. I would never suggest that a Justice of the Supreme Court, or any judge, should change his or her opinions based on public opinion. That is not the way I view the role of the judge. I am confident that is not the way that Justice Kennedy views his role, any other judge views his or her role. When we talk as commentators about the individual views of justices we are usually talking about their written record as it has developed through their majority opinions, their separate writings. And what I was doing in that comment is likely – I had been talking about Justice Kennedy's distinct record on issues involving classifications based on sexual orientation, and predicting where those legal views might bring him on future cases."*²

But the original context strongly suggests that you were referring to evolving public sentiment. The full context of the question is as follows:

*"Whatever the case, given Justice Kennedy's track record on gay rights, it won't be surprising if he eventually caps his career with a landmark decision ensuring that gay couples throughout the nation can wed, Harris said. 'Justice Kennedy should be changing the same way the whole country is changing,' she said." (emphasis added)*³

You said in the hearing that you had been "talking about Justice Kennedy's distinct record on issues involving classifications based on sexual orientation, and predicting where those legal views might bring him on future cases." But, if that were the case, and you would not base your decisions on changes in public opinion, why did you make the normative claim that Justice Kennedy "should" be changing in the same way?

¹ *Judicial Nominations Hearing Before the S. Comm. on the Judiciary*, 113th Cong. __ (2014) (statement of Sen. Charles E. Grassley, Ranking Member, S. Comm. on Judiciary).

² *Judicial Nominations Hearing Before the S. Comm. on the Judiciary*, 113th Cong. __ (2014) (statement of Pamela Harris, Nominee).

³ Jeff Overley, *Dubbed 'first gay justice,' Kennedy may not be done yet*, Law 360, June 26, 2013, available at <http://www.law360.com/articles/453184/dubbed-first-gay-justice-kennedy-may-not-be-done-yet>.

Response: In this interview with a journalist, I discussed what the article refers to as Justice Kennedy's "track record" on issues regarding sexual orientation. By that, I mean the record of Justice Kennedy's legal views, as they are set forth in opinions Justice Kennedy has authored for the Supreme Court in cases involving classifications based on sexual orientation. *See United States v. Windsor*, 133 S. Ct. 2675 (2013); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Romer v. Evans*, 517 U.S. 620 (1996). Based on that record of Justice Kennedy's application of constitutional law and precedent, I made a prediction about how Justice Kennedy might approach another case in the same area. I used the word "should" not in a normative sense, but in that predictive sense, anticipating the future direction of Justice Kennedy's jurisprudence.

It is inappropriate for any judge or Justice to base his or her decisions on their own personal views or on public opinion. I have the greatest respect for Justice Kennedy, as I do for all of the Justices of the Supreme Court, and I would never presume to direct him to adopt any view, nor suggest that Justice Kennedy's decisions are determined by any personal views he might have or by public opinion.

2. At your hearing, I asked you:

*"You also stated that you thought that 'the tide of history is going one way,' and that you didn't think (well that's the end of that part of the quote) – and that you didn't think that the Justices 'wanted to be on the wrong side of that.' Do you believe it's appropriate for a judge to take into consideration what 'side of history' their judicial interpretations should be?"*⁴

You responded:

*"Again, no, Senator, I do not, and I did not mean to suggest that. I think there is another sentence in the article that makes clear that – the context makes clear that – what I was talking about was the notion of judicial restraint, that courts, the Supreme Court, might want to be especially cautious on social issues when the political branches and political institutions sort of deeply and rapidly engaged in those issues, that the courts might want to take small steps, not take big steps, and leave as much as possible to the democratic process."*⁵

Printed below is the full context of your quotation:

*"She [Harris] thinks Chief Justice John G. Roberts Jr. will want to be cautious about the court taking a bold stand on an issue in which public opinion seems to shift quickly. Harris is hardly disinterested, she noted: She spent the past month working to see same-sex marriage approved in Maryland. 'I think the tide of history is going one way,' she said. 'I don't think the justices want to be on the wrong side of that.'"*⁶

⁴ Grassley, *supra* note 1 (quoting Robert Barnes, What did Supreme Court hear about same-sex marriage on Election Day?, WASH. POST, November 13, 2012.)

⁵ Harris, *supra* note 2.

⁶ Robert Barnes, What did Supreme Court hear about same-sex marriage on Election Day?, WASH. POST, November 13, 2012.

You said in the hearing that in your comments to the *Washington Post*, printed on November 13, 2012, that you were talking about “the notion of judicial restraint, that courts, the Supreme Court, might want to be especially cautious on social issues when the political branches and political institutions sort of deeply and rapidly engaged in those issues, that the courts might want to take small steps, not take big steps, and leave as much as possible to the democratic process.” You also said in response to my first question that you “would never suggest that a justice of the Supreme Court, or any judge, should change his or her opinions based on public opinion.”

- a. Do you believe that when courts are “especially cautious on social issues when the political branches and political institutions sort of deeply and rapidly engaged in those issues,” they are considering public opinion as they arrive at a judicial decision?

Response: No.

- b. If not, why not?

Response: As I said at my hearing, I believe that the Supreme Court appropriately may exercise restraint in a prudential sense, deciding cases narrowly – what I referred to as “tak[ing] small steps, not [] big steps” – so that contentious social issues are resolved to the greatest extent possible by the democratic process. But in issuing a decision, whether narrow or broad, the role of any court is to apply law and precedent to the facts, without regard to public opinion on the underlying issue or whether that decision will be popularly received.

- c. Do you believe it is ever appropriate for judges to adjust the deference they provide to the political branches according to changes in the public salience of particular issues?

Response: No.

3. At your hearing, I asked you:

*“You moderated a panel on the Supreme Court’s upcoming term during which you said ‘the Constitution evolves, it has to keep pace with changes in the factual predicates, and yes, our readings of constitutional provisions ought to change and evolve in light of circumstances on the ground like that.’ ... I’d like to know how you intend to decide what changed particular societal circumstances you will consider if confirmed. Let me say it this way, it’s clear from your writings and speeches that you’re talking about shifting public opinion rather than simply technological advances. For example, in the introduction of a book, *It Is a Constitution We Are Expounding*, you wrote, ‘Justice Brennan explores the importance of the judge’s obligation to speak for the community—the current community—in interpreting the Constitution.’ You’ve also discussed what you call ‘constitutional legitimacy’ coming from social movements. The problem with this view is that it leads to a judge’s imposing personal views into cases. Justice Scalia expressed it this way well in dissent in regarding the 8th Amendment, writing ‘Of course the risk of assessing evolving standards is that it is all too easy to believe that evolution has culminated in one’s own views.’ Once you start considering shifting public opinion, you’re essentially reducing*

constitutional interpretation to public poll. So assuming you will interpret the Constitution the way that all of your writings suggest – and I know the answers to Senator Coons suggest otherwise – how do you intend to guard against imposing your own views as opposed to what you view as shifting public opinion?”⁷

You responded:

“Senator, let me start by saying that as a Supreme Court litigator, an appellate litigator, as someone who has specialized in preparing other advocates for their arguments before the Court, I always have been keenly aware of the boundaries of judicial decision-making. And as a litigator, every argument I ever advanced took as its starting point the methodologies that have been used by the Supreme Court and the lower courts and the methodologies that have been approved by those courts. That is how I’ve conducted my career. In terms of some of the other comments you have raised, I do not believe it is the role of a judge, ever, to import his or her own personal values into judicial decision-making. In cases in which the Court has looked to things – to social conditions, things like that – what the Court – and again, I would follow the Court’s precedent on this – what they have looked to is objective indicia of such things. They’ve looked to state laws, they’ve looked to common law. They’ve looked to practices in the states. I’m aware of no account of legitimate judicial decision-making that has judges taking public opinion polls or using their own personal preferences to decide cases.”⁸

Printed below is the full context of your quotations:

“...at crucial moments for the Constitution, the original framing, the amendments, the Reconstruction period, the history behind the Constitution was very progressive in very important ways. It’s important that the discussion over interpretive method account for this. So I think we do start at a point of some agreement with originalists, in the importance of text and history. But that said, I also think there very badly needs to be a fuller discussion about where you go after that, or in addition to that. About other valid sources of constitutional meaning, things discussed in the excerpts of the volume like constitutional structure, constitutional precedent, the consequences of constitutional rulings, both on the ground and for continuity of legal discourse, and things like values and norms that are rooted in the Constitution or part of constitutional heritage, but whose meaning may change over time, whose application may change over time in response to changed understandings about what a word like equality really means. That’s the kind of discussion that we’re hoping to promote with this volume.”⁹

“The collection next turns to two excerpts that address the importance of interpreting the Constitution in light of the evolving values of American society. Chapter Eleven, an excerpt from Justice Thurgood Marshall’s “Reflection on the Bicentennial of the U.S.

⁷ Grassley, *supra* note 1 (quoting Pamela Harris, Panelist, “Book Discussion: ‘Keeping Faith with the Constitution’ and ‘It is a Constitution We are Expounding: Collected Writings on Interpreting Our Founding Document,’” American Constitution Society, May 1, 2009.)

⁸ Harris, *supra* note 2.

⁹ Pamela Harris, Panelist, “Book Discussion: ‘Keeping Faith with the Constitution’ and ‘It is a Constitution We are Expounding: Collected Writings on Interpreting Our Founding Document,’” American Constitution Society, May 1, 2009.

Constitution,” emphasizes the degree to which the Constitution as we know it today has been altered and changed not simply by amendment, but by social movements and the evolution of societal mores since its enactment. His article underscores the importance of a society’s ethical and moral commitments in the development of the Constitution to date, and the importance of continuing to recognize the relevance of such considerations in the future. Similarly in Chapter Twelve, Justice Brennan, discussing his own method of constitutional interpretation, emphasizes the importance of the relationship between the values of contemporary society and the Constitution. While it is important for current Justices to ‘look to the history of the time of framing and to the intervening history of interpretation’ in interpreting the Constitution, ‘the ultimate question must be: What do the words of the text mean in our time?’ This approach is consistent, he asserts, with the ‘transformative purpose of the text:’ ‘Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.’¹⁰

You said in the hearing that you “do not believe it is the role of a judge, ever, to import his or her own personal values into judicial decisionmaking. In cases in which the Court has looked to things – to social conditions, things like that . . . what they have looked to is objective indicia of such things. They’ve looked to state laws, they’ve looked to common law. They’ve looked to practices in the states. I’m aware of no account of legitimate judicial decisionmaking that has judges taking public opinion polls or using their own personal preferences to decide cases.”¹¹

Yet, in your Introduction to *It Is a Constitution We Are Expounding*, you described the excerpt of Justice Thurgood Marshall’s essay contained therein as “emphasiz[ing] the degree to which the Constitution as we know it today has been altered and changed not simply by amendment, but by social movements and the evolution of societal mores since its enactment. His article underscores the importance of a society’s ethical and moral commitments in the development of the Constitution to date, and the importance of continuing to recognize the relevance of such considerations in the future.”¹² You also described the excerpt of Justice Brennan’s essay as “emphasiz[ing] the importance of the relationship between the values of contemporary society and the Constitution.”¹³

a. How would you characterize the accounts of judicial decisionmaking described by Justices Brennan and Marshall in *It Is a Constitution We Are Expounding*?

Response: The introduction to *It Is a Constitution We Are Expounding* characterizes those two excerpts as “address[ing] the importance of interpreting the Constitution in light of the evolving values of American society.” See *It Is A Constitution We Are Expounding* at 15. The book in question is a collection of writings by various authors, taking multiple and sometimes contradictory approaches to constitutional interpretation – in addition to the excerpts from Justices Brennan and Marshall, there are excerpts

¹⁰ IT IS A CONSTITUTION WE ARE EXPOUNDING 11 (Pamela Harris and Karl Thompson, eds.), available at https://www.acslaw.org/pdf/ACS_Expounding_FNL.pdf.

¹¹ Harris, *supra* note 2.

¹² IT IS A CONSTITUTION WE ARE EXPOUNDING, *supra* note 10.

¹³ *Id.*

from pieces by Judge Robert Bork, Judge Richard Posner, Professor Akhil Reed Amar, and many others. The collection, produced by the American Constitution Society for Law and Policy, is intended to capture the broad and often academic debate around constitutional interpretation, including theories that are novel or contested.

I would like to clarify my role in this project. The American Constitution Society for Law and Policy was a client of my law firm, O'Melveny & Myers. It sought to compile a book of materials related to constitutional interpretation, and already had selected items for inclusion. My role, working with other O'Melveny lawyers and at the direction of American Constitution Society staff, was limited to assisting in excerpting and organizing the pieces and drafting an introduction that would capture the range of views included. It was that project and that range of views that I was discussing in the remarks quoted above.

b. In what sense are the “indicia” they look to “objective”?

Response: At my hearing, I referred to the degree to which the Supreme Court, in considering “social conditions” in the course of deciding cases, anchors its reasoning in “objective indicia” such as statutory or common law. In the Fourth Amendment context, for instance, the Court often looks to such sources in considering whether “society is prepared to accept” an expectation of privacy as objectively reasonable. *See California v. Greenwood*, 486 U.S. 35, 39–40 (1988); *id.* at 52 (Justices Brennan and Marshall, dissenting, relying on local laws to show societal acceptance of an expectation of privacy); *see also, e.g., Florida v. Riley*, 488 U.S. 445, 451 (1989) (relying on Federal Aviation Administration regulations); *Rakas v. Illinois*, 439 U.S. 128, 143 n.12 (1978) (relying on common law of property). My comment was describing the decisions of the Supreme Court, and not intended to capture any personal views that might have been expressed by individual Justices. However, the introduction to *It Is a Constitution We Are Expounding* characterizes all of the approaches to interpretation represented in the volume, including those of Justices Brennan and Marshall, as “objective” in the sense that valid interpretive methods “will lead judges to conclusions about constitutional interpretation that are independent of, and may well differ from, their own policy preferences.” *It Is A Constitution We Are Expounding* at 12.

c. Would you model your own jurisprudence on these accounts?

Response: No. As a Supreme Court and appellate litigator, I based my arguments on the methodologies adopted and approved by the Supreme Court and the appellate courts. If confirmed as a circuit judge, I would faithfully follow the methodological precedents of the Supreme Court and the Fourth Circuit, applying the interpretive approaches and only the interpretive approaches used by those courts.

4. At your hearing, Senator Cruz asked you:

“In 2009, at an American Constitution Society panel, you described yourself as “a profoundly liberal person” who sees the Constitution as “a profoundly progressive document.” And you went onto say, “I always feel, unapologetically, you know, left to my

own devices, my own best reading of the Constitution, it's pretty close to where I am." Now, given the definition you've just given of judicial activism, those public comments raise some concern. How would you respond to those concerns?"¹⁴

You responded:

"Well, Senator, I would respond first, I think, by pointing to my entire professional career, where as Supreme Court and appellate advocate at O'Melveny and Meyers, running the Supreme Court Institute on an entirely non-partisan basis. I have never let any personal views I have, political views I may have affect the discharge of my professional responsibilities. And I would not do that if I were confirmed as a judge."¹⁵

"With respect to those specific comments, if I can just give you a little bit of context, they came when I was arguing, basically arguing against audience members who thought that the Constitution should be amended to address certain Supreme Court decisions that they found too conservative. And my point was that commitment to the Constitution actually ought to transcend that kind of political difference—and that was not an appropriate reason for amending the Constitution. I describe myself as liberal just as a matter of context to suggest that even though I might share some of their political commitments, I did not believe the Constitution should be amended for that reason, and that I did believe that commitment to the Constitution transcends politics."¹⁶

The quote to which Senator Cruz's question referred was preceded by this question from Tom Goldstein:

"Pam Harris, one of the questions is about social movements, and asks, in essence, is the problem here the failure to produce a just society—one that is inherent in the document of the Constitution that we have. And by trying to create a way of looking at the Constitution that will produce more just results, are we actually distracting social movements away from something that would be better, which is making a better Constitution—whether through constitutional amendment or through projects that involve changing legislation, and the like; how much is there a legitimate concern that we're trying to make the best of a bad situation rather than say, much more radically changing society at its core?"¹⁷

In response to Mr. Goldstein's question, you said the following:

"People often ask (in panels like this): Show me, prove to me that you're doing this honestly, show me where your personal policy preferences diverge from the Constitution. Show me that you're not just reading them to be the same thing. And I always feel unapologetically, you know, left to my own devices, my own best reading of the Constitution, it's pretty close to where I am. Because I think the Constitution is a

¹⁴ *Judicial Nominations Hearing Before the S. Comm. on the Judiciary*, 113th Cong. _ (2014) (statement of Sen. Ted Cruz, Ranking Member, S. Comm. on Judiciary) (quoting Pamela Harris, "The ACS National Convention: Keeping Faith with the Constitution," American Constitution Society, June 19, 2009).

¹⁵ Harris, *supra* note 2.

¹⁶ *Id.*

¹⁷ Thomas Goldstein, Moderator, "The ACS National Convention: Keeping Faith with the Constitution," American Constitution Society, June 19, 2009.

*profoundly progressive document. I think it's born of a progressive impulse. I think particularly, as amended in the Reconstruction era, it is committed to principles like equality and liberty and individual dignity, and I'm a profoundly liberal person so we [the Constitution and I] match up pretty well. I make no apologies for that. I think it's a great document. And I think as amended, and as interpreted, and the method, with the people of good will, applying the methodology that's talked about in this book, it is something we can all be really proud of."*¹⁸

In the hearing, you characterized your previous comments as standing for the proposition that "commitment to the Constitution transcends politics." Further, you characterized your previous comments as "describ[ing] myself as liberal just as a matter of context."

However, on the panel, you said that in response to people who ask you to show "where your personal policy preferences diverge from the Constitution," you "feel unapologetically, you know, left to my own devices, my own best reading of the Constitution, it's pretty close to where I am." You concluded, "I'm a profoundly liberal person, so we [the Constitution and I] match up pretty well."

- a. Was your point on the panel that the Constitution is a progressive document and coincidentally happens to align with your personal policy preferences, or was your point, as you said at the hearing, that commitment to the Constitution transcends politics?**

Response: My point was that I did not see, in Mr. Goldstein's words, a need for a "better Constitution," because I believe in the one that we are privileged to have already. My commitment to the Constitution transcends any disagreement over particular "results," again in Mr. Goldstein's words, of our Constitution or Supreme Court decisions construing it.

- b. Why did you state that the Constitution and your "personal policy preferences" "match up pretty well"?**

Response: As I sought to explain on the panel, I believe that the Constitution is a forward-thinking document for its day, "committed to principles like equality and liberty and individual dignity." I embrace those general principles personally, as well, as I expect virtually all of us do, and those are the "preferences" to which I was referring.

- c. What are some of the "personal policy preferences" that you were referring to?**

Response: Please see response to 4b.

- d. Why does your own best reading of the Constitution align with those "personal policy preferences"?**

¹⁸ Pamela Harris, Panelist, "The ACS National Convention: Keeping Faith with the Constitution," American Constitution Society, June 19, 2009.

Response: Please see response to 4b.

5. At your hearing, Senator Cruz asked:

*"Well, I appreciate your comments clarifying that. Let me ask an additional question. Also in 2009, you criticized liberals for believing that the Warren Court's decisions were 'as liberal as it gets.' And you responded saying 'that's not right.' And you went onto say 'we've stunted the spectrum of legal thought in a way that removes the possibility that there could've been more progressive readings of the Fourth and Fifth Amendments.' Now, as you know, the reaction to the Warren Court's criminal procedure rulings—widely perceived as creating loopholes allowing dangerous criminals back onto the street—was fairly dramatic. And it is unusual for judicial nominees to have taken positions suggesting that the Warren Court was not nearly liberal enough, and it should have been more liberal. Is that your view? I want to understand what your view is on that question."*¹⁹

You responded:

*"Senator, that's not my view, and it's also really not what I said. Again, if I can just give you a context on that. I was responding on that panel to an argument that justices perceived as liberal, like Chief Justice Warren, never—and I think the phrase was 'had never felt the pain of reaching a constitutional decision that disagreed with liberal views.' And the only point that I was making was that several of Chief Justice Warren's criminal procedure decisions had not, in fact, adopted what was being presented as the liberal view. I believe I talked about the Terry case, and that was the only point I was making—that sometimes people assume that because Chief Justice Warren wrote an opinion, it must have been terribly liberal. I was simply pointing out that in the criminal procedure context, Chief Justice Warren wrote opinions that did not adopt what was being advanced as the most pro-defendant or liberal position. It's just a descriptive point about certain criminal procedure decisions."*²⁰

Printed below is the full context of your quotation:

"I sometimes wonder whether when we think about someone like Chief Justice Warren . . . whether we almost have, by now, a stunted sense of what the legal choices really are, what really is a liberal legal outcome, whether we sometimes almost think circularly: Well, if Chief Justice Warren came out that way, that must be as liberal as it gets, whether we're reasoning backwards a little bit, because I think of Chief Justice Warren's work mostly in the criminal procedure area, and I think of some of his biggest decisions like Miranda and Terry, there's pain all over those pages. I think we now think of Miranda as an extremely liberal opinion, but it fell well short of what was being argued in that case, which is not that you have a waivable . . . right to counsel when you're being interrogated, but that there can be no station house interrogation without a lawyer. The Court didn't go there, and I think the pain of that is actually pretty clear on the face of that opinion, same with Terry . . . the argument was, you want to seize someone, frisk someone, throw them up against a wall, you have to have probable cause . . . Court said, no that's

¹⁹ Cruz, *supra* note 14 (quoting Harris, *supra* note 9).

²⁰ Harris, *supra* note 2.

okay, reasonable suspicion can be enough, and the pain of that is all over the pages in Terry. And so I worry that sometimes when we look back, particularly at the work of the justices in the 1960s and 1970s, there's almost an inclination to assume that must be as liberal as it gets. That's not right! I think that we've stunted the spectrum of legal thought in a way that removes the possibility that there could have been more progressive readings of the Fourth Amendment and the Fifth Amendment. And I know this area best, but I would assume that the same is true in other areas that are covered in your book."²¹

Your response does not address the normative positions that you took—above and beyond a mere “descriptive point.” Please describe, in detail, the “more progressive readings of the Fourth and Fifth Amendments” that, in your view, would properly remedy the “stunted . . . spectrum of legal thought.”

Response: Thank you for the opportunity to clarify my remarks. The outcome of a decision should not be characterized by its author's reputation, and in an academic setting, legal discussion should include the full range of positions that have been argued in the case. In studying decisions such as *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Terry v. Ohio*, 392 U.S. 1 (1968), that range includes positions that would have provided more protection to defendants than those ultimately adopted by the Supreme Court. While such positions may be part of the “spectrum” of legal thought, they are not precedent. As a Supreme Court and appellate litigator, I based my arguments on precedent, and if confirmed as a circuit judge, I would faithfully follow the precedents of the Supreme Court and the Fourth Circuit.

6. In response to the first question I asked at your nomination hearing, you stated:

*“I would never suggest that a justice of the Supreme Court, or any judge, should change his or her opinions based on public opinion. That is not the way I view the role of the judge.”*²²

Yet, your record appears to make clear your view that, in your words, “changing public understanding” “drives that evolving understanding” of the Constitution. For instance:

On a panel discussing *It is a Constitution We Are Expounding*, you claimed that, as an editor, you “hope[d] to promote” a “discussion” about sources of constitutional meaning:

*“I also think there very badly needs to be a fuller discussion about where you go after [constitutional text and history], or in addition to [constitutional text and history]. About other valid sources of constitutional meaning, things discussed in the excerpts of the volume like constitutional structure, constitutional precedent, the consequences of constitutional rulings, both on the ground and for continuity of legal discourse, and things like values and norms that are rooted in the Constitution or part of constitutional heritage, but whose meaning may change over time, whose application may change over time in response to changed understandings about what a word like equality really means.”*²³

²¹ Harris, *supra* note 9.

²² Harris, *supra* note 2.

²³ *Id.*

While on a panel on “The Living Constitution,” you asserted:

*“They [constitutional provisions] take their meaning—and they should take their meaning—from what comes after . . . and this is my source of legitimacy . . . from what the People do at these critical junctures—the civil rights movement, the women’s movement, the gay rights movement—when they reconstitute what it is we’re talking about when we talk about American constitutional tradition, when we say words like equality and liberty, when we change what they mean because what the people themselves have done.”*²⁴

And while on a 2009 ACS panel, you stated:

*“Through the commitment and sacrifice of members of the public, it both expresses an evolving and changing public understanding of a constitutional principle—something from the Constitution, like equality—it both expresses that evolving understanding and drives that evolving understanding.”*²⁵

- a. Please explain how you distinguish social movements as a source of constitutional change that “drives evolving understanding,” which you have repeatedly embraced, from changes in “public opinion,” that you expressly rejected at your hearing.

Response: I do not believe that the Constitution’s provisions and principles change or evolve, other than by the amendment process of Article V; they are fixed and enduring, and judges are not free to change them, whether by incorporating public preferences or their own policy views. Courts are sometimes called upon to apply those original provisions to new facts or circumstances, and in that sense, their application may change over time. See, e.g., *United States v. Lopez*, 514 U.S. 549, 556 (1995) (discussing changed application of constitutional provision as brought to bear on changed economic circumstances). But that is the only sense in which I believe that constitutional provisions or principles “evolve.”

On a few occasions during my time in private practice, I was asked to appear on more academic panels on constitutional interpretation, featuring give-and-take on a wide range of theories. In that context, and after earlier discussing *Brown v. Board of Education*, 347 U.S. 483 (1954), and other Supreme Court desegregation decisions, I remarked upon the degree to which the Court may have relied on contemporary understandings in applying the original principle of the Equal Protection Clause to current circumstances. In *Brown* itself, for instance, in overruling *Plessy v. Ferguson*, 163 U.S. 537 (1896), the Court distinguished prior knowledge of the effects of segregation from more modern understandings. *Brown*, 347 U.S. at 494; see also *Planned Parenthood v. Casey*, 505 U.S. 833, 862-64 (1992) (describing *Brown* as responsive to “facts that the country could understand, or had come to understand already, but which the Court of an earlier day . . . had not been able to perceive”). Similarly, though the Equal Protection Clause formerly had not been thought to protect women, in applying that provision over time to new understandings of women’s

²⁴ Pamela Harris, Panelist, “Our Enduring Constitution: Applications and Interpretations,” American Constitution Society, June 14, 2008.

²⁵ Harris, *supra* note 18.

capabilities and gender stereotypes, the Supreme Court has held that gender discrimination is subject to heightened scrutiny under the Equal Protection Clause. *See, e.g., Frontiero v. Richardson*, 411 U.S. 677, 682-88 (1973) (plurality opinion). In other contexts, as well, the Supreme Court has considered contemporary understandings in applying original constitutional principles. In certain Fourth Amendment cases, for instance, the Court has considered whether “society is prepared to accept” as reasonable an expectation of privacy, *see, e.g., California v. Greenwood*, 486 U.S. 35, 40 (1988) (Fourth Amendment does not prohibit the warrantless inspection of trash outside a home), and in considering certain Eighth Amendment questions, the Court has looked to “evolving standards of decency,” *see, e.g., Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (Eighth Amendment prohibits the revocation of citizenship as a punishment). In none of these cases do I understand the Supreme Court to be changing the nature of underlying constitutional principles or making decisions based on public preferences; instead, the Court is applying enduring constitutional principles to contemporary circumstances. *See Casey*, 505 U.S. at 864. If confirmed, I would consult such factors only in following Supreme Court or Fourth Circuit precedent.

b. If confirmed, how would you identify which social movements “reconstitute what it is we’re talking about when we talk about American constitutional tradition”?

Response: If confirmed as a circuit judge, I would faithfully follow Supreme Court and Fourth Circuit precedent on all methodological questions, as described above. The best evidence of my fidelity to precedent and text is my career as both a litigator and the Executive Director of Georgetown’s Supreme Court Institute, where my advocacy on behalf of clients and the assistance I provided to other advocates through moot courts was based entirely in Supreme Court and appellate precedents.

You have also strongly rejected “originalism” as a method of constitutional interpretation:

“I just don’t think that any account of the Constitution that even seems to—even seems to—privilege the Constitution as it was originally ratified, or even what people remember as it was amended particularly during the Reconstruction period, I don’t think it’s consistent with the way most people do—and they way we should—think about the Constitution. . . . And that’s why I’m not an originalist, even now.”²⁶

c. Please explain why you reject originalism as an interpretive method.

Response: I do not reject originalism as an interpretive method. As I discussed earlier on the same panel, I always have adhered to the interpretive approaches adopted by the courts in litigating constitutional questions. However, the term “originalism” is used by different people to mean different things. If confirmed as a circuit judge, I would have no difficulty following Supreme Court and Fourth Circuit precedent on methodology, including methodologies generally described as originalist, in construing constitutional provisions.

²⁶ Harris, *supra* note 24.

For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court employed a form of originalism often described as “original public meaning” to interpret the text of the Second Amendment, construing the words as they would have been understood in common usage when the Second Amendment was drafted and adopted. In *Crawford v. Washington*, 541 U.S. 36 (2004), the Court relied on the historical background of the Sixth Amendment Confrontation Clause in English common law and colonial history to correctly interpret its meaning. In other cases, however, the Supreme Court has relied principally or additionally on its own precedent in deciding constitutional cases, or on other interpretive approaches. In *Printz v. United States*, 521 U.S. 898 (1997), for instance, in considering a federalism-based challenge to federal action, the Court examined not only original understandings as reflected in the Constitution’s historical background, but also the Constitution’s structure and the general purposes or “essential postulates” it reflects, *id.* at 918-22, historical practice, *id.* at 905-09, and the Court’s own precedent, *id.* at 925-33. If confirmed as a circuit judge, I would be bound by and would follow all of the Supreme Court’s precedent on interpretive methodologies, as well as relevant Fourth Circuit precedent, without regard to any observations I might have made as a commentator on a panel.

d. Please identify cases where the Supreme Court used originalism as an interpretive method with which you disagree.

Response: The duty of a circuit judge is to follow those interpretive methods dictated by precedent, and if confirmed, I would faithfully apply all Supreme Court precedent, as well as Fourth Circuit precedent, regarding the use of originalist methodologies.

7. You represented *Sumnum* in *Pleasant Grove City v. Sumnum*²⁷, and the Supreme Court rejected the argument you advanced 9-0. After the Supreme Court rejected your argument, you wrote that the case was an “Establishment Clause ‘victory,’” and “should provide significant assistance to plaintiffs challenging religious displays under the Establishment Clause.”²⁸ In the same article, you also argued that “there is an important distinction between the mere display of a Ten Commandments monument [which the Supreme Court upheld in *Van Orden v. Perry*]²⁹, and the denial of a request by another religious group for ‘equal access’ for its own religious message.”³⁰

a. After the Supreme Court’s holding in *Salazar v. Buono*³¹ and other Establishment Clause cases decided since *Sumnum*, do you still believe *Sumnum* increased plaintiffs’ ability to challenge religious displays under the Establishment Clause?

Response: To provide context for these remarks, I was invited to speak on a panel about my representation of a law firm client in *Pleasant Grove v. Sumnum* and the

²⁷ 555 U.S. 460 (2009).

²⁸ Pamela Harris, *Pleasant Grove v. Sumnum and the Establishment Clause: Giving with One Hand, Taking with the Other?*, 46 WILLAMETTE L. REV. 677, 680 (2010).

²⁹ 545 U.S. 677 (2005).

³⁰ Harris, *supra* note 28, at 684.

³¹ 559 U.S. 700 (2010).

strategy I pursued on behalf of our client, and those remarks later were published in the *Willamette Law Review*. In that capacity, I discussed the potential effect of *Pleasant Grove v. Summum*, 555 U.S. 460 (2009), a case which was litigated entirely under the Free Speech Clause, on Establishment Clause litigation. In some prior Establishment Clause cases, courts had questioned whether privately donated religious monuments displayed on public land could be attributed to the government, as is necessary to show an Establishment Clause violation. In *Pleasant Grove*, however, the Supreme Court held that even a privately financed and donated monument, once accepted by the government and displayed on government land, constitutes “government speech.” *Id.* at 470-71. My suggestion was that the “government speech” holding of *Pleasant Grove* would simplify the question of government attribution in Establishment Clause cases, as well, making clear that religious monuments displayed by the government on public land speak for the government. Additionally, I would note that my remarks were given before the Supreme Court had issued its decision in *Salazar v. Buono*, 559 U.S. 700 (2010).

- b. Under current Supreme Court precedent, do you believe that a city which displayed a Ten Commandments memorial and did not allow all other religious groups to erect whatever religious displays they might like would be in violation of the Establishment Clause? If not, is that a change in the position you articulated in your law review article?**

Response: The Supreme Court upheld the display of the Ten Commandments in *Van Orden v. Perry*, 545 U.S. 677 (2005), and the Court has not held that a city that displays the Ten Commandments must also allow for the display of other religious monuments, on Establishment Clause or any other grounds. My comments about *Pleasant Grove* highlighted some of the ways that the holding of the case possibly could help future Establishment Clause plaintiffs, and then discussed ways that the holding of the case possibly could hurt future Establishment Clause plaintiffs. If confirmed as a circuit judge, I would faithfully apply all relevant Supreme Court and Fourth Circuit precedent to any case involving a government display of the Ten Commandments, as I would in all cases before me, without regard to any prior client representations or discussions of those representations.

- c. What do you believe the Establishment Clause is in place to protect?**

Response: In *Van Orden v. Perry*, 545 U.S. 677, 683 (2005), the Supreme Court stated that the Establishment Clause protects religious liberty, embodying the principle that “governmental intervention in religious matters can itself endanger religious freedom.” The Court in *Van Orden* also recognized the “strong role played by religion and religious traditions throughout our Nation’s history,” and the need to respect that principle, as well, in Establishment Clause cases. *Id.* at 683-84. If confirmed, I would follow the understanding of the Establishment Clause adopted by Supreme Court and Fourth Circuit precedent.

- 8. In an ACSBlog post, you wrote:**

*"Will the Court stop protecting women from anti-choice politicians, and leave women's decisions about whether or not to have an abortion subject to ever-greater government restriction and control? These questions undoubtedly will be (and should be) front and center as the Senate and the Nation debate who should replace Justice O'Connor."*³²

a. What restrictions on abortion are constitutional?

Response: In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court, "reject[ing] the trimester framework" of *Roe v. Wade*, 410 U.S. 113 (1973), held that the government has a profound interest in protecting and promoting fetal life, as well as pregnant women's health, from the very start of pregnancy, *id.* at 875-76, 878, and that it may regulate abortion even in the earliest stages of pregnancy to advance those interests. Such restrictions on abortion are constitutional under *Casey* so long as they do not impose an "undue burden" on a woman seeking an abortion, which the Court defined as having "the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." *Id.* at 876-77. Subsequent to viability, the government "in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." *Id.* at 879 (internal quotation and citation omitted). If confirmed, I would apply *Casey* and all other relevant Supreme Court and Fourth Circuit precedent to any case involving abortion, as I would follow Supreme Court and circuit precedent in all matters.

b. Should abortion be front and center as the Senate and the Nation debate whether to confirm you to the Fourth Circuit?

Response: I would not presume to dictate the terms under which my nomination should be considered. I would hope, of course, that my long career would be evaluated as a whole. My career has been spent primarily as a litigator in private practice, representing a wide range of clients without regard to any personal views I might have had about their positions; preparing other advocates for their Supreme Court arguments at the Supreme Court Institute at Georgetown University Law Center, without regard to their clients or the positions being advanced; and as a teacher, dedicated to presenting all sides of each issue to my class. If confirmed as a circuit judge, I would be bound to follow and would have no difficulty following Supreme Court precedent, as well as Fourth Circuit precedent, without regard to any personal observations I might have made as a commentator.

c. You critiqued the Supreme Court in *Gonzales v. Carhart*³³ for essentially saying "you could find one guy to say 'I don't know if it's safe' . . . to create medical

³² Pamela Harris and Dawn Johnsen, *What O'Connor's Retirement Means for Reproductive Liberty*, ACSBLOG (July 5, 2005), <http://www.acslaw.org/acsblog/guest-bloggers-what-oconnors-retirement-means-for-reproductive-liberty>.

³³ 550 U.S. 124 (2007).

uncertainty that will allow state regulation.”³⁴ You also described that decision, which addressed a ban on partial birth abortion, as involving “late-ish” term abortion.³⁵ Do you believe the Court wrongly decided *Gonzales v. Carhart*, as your comments appear to make clear?

Response: These remarks were made on a 2013 panel held at Georgetown University Law Center discussing cases then pending at the Supreme Court, including *Cline v. Oklahoma Coalition for Reproductive Justice*, 134 S. Ct. 550 (2013) (cert. dismissed). In connection with that case, which involved state restrictions on medically induced abortions obtained in the first weeks of pregnancy, and in response to comments from others, I considered how the standards set forth in both *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and *Gonzales v. Carhart*, 550 U.S. 124 (2007), might apply. If confirmed as a circuit judge, when the Supreme Court rules, that is the end of the matter, and I would faithfully follow and apply the Court’s decision in *Gonzales v. Carhart*, as I would all Supreme Court and Fourth Circuit precedent. I would do so without regard to any predictions or observations I might have made as a commentator on a panel.

9. **In *Stenberg*, the Court held that a Nebraska law criminalizing partial-birth abortion violated the Due Process clause. Congress then responded by passing the Partial-Birth Abortion Ban which fixed the deficiencies the Supreme Court had found with the Nebraska law in *Stenberg*. In *Gonzales*, the Court distinguished the Nebraska law with the new federal law and upheld the Partial-Birth Abortion Ban.**
 - a. **The ban on partial-birth abortion – a procedure Congress determined had a “disturbing similarity to the killing of a newborn infant” (*Gonzales v. Carhart*, quoting Congressional Findings³⁶) – was upheld by the Supreme Court in *Gonzales v. Carhart*. Have your views on partial-birth abortion evolved at all since the time you criticized the Court’s *Gonzales* decision?**

Response: If confirmed as a circuit judge, I would faithfully follow and apply the Supreme Court’s decision in *Gonzales v. Carhart*, 550 U.S. 124, 132 (2007), as I would all Supreme Court and Fourth Circuit precedent, regardless of any observations I had made about the case in my capacity as a commentator in a blog post or any other context.

- b. **What are the differences in the two laws, the Nebraska law and the federal law?**

Response: In *Gonzales v. Carhart*, the Supreme Court held that as compared to the Nebraska law it had invalidated in *Stenberg v. Carhart*, 530 U.S. 914 (2000), the federal Partial-Birth Abortion Ban Act was “more specific concerning the instances to

³⁴ Pamela Harris, Moderator, “2013-2014 Supreme Court Term Preview,” American Constitution Society, September 16, 2013, available at <http://www.c-span.org/video/?315036-1/supreme-court-20132014-term-preview/> (discussing the pending contraceptive mandate cases).

³⁵ *Id.*

³⁶ 550 U.S. 124, 158 (2007) (quoting Congressional Findings ¶ (14)(L)).

which it applies and in this respect more precise in its coverage.” The Court in *Gonzales* thoroughly considered and explained the differences between the two statutes in this regard in rejecting claims that the federal statute was void for vagueness or impermissibly broad in its reach. *Id.* at 148-54.

- c. **In your blog post on this topic, you wrote that “the Court may have an institutional interest in standing by its prior decision and protecting its prerogatives against what it likely will see as encroachment by Congress.”³⁷ What did you view as the Court’s prerogatives in this case?**

Response: The prerogative referred to in this blog post is the Supreme Court’s duty and authority to “say what the law is.” See *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997) (citing *Marbury v. Madison*, 1 Cranch 137 (1803)). In *Stenberg v. Carhart*, 530 U.S. 914 (2000), the Supreme Court held unconstitutional a state ban on partial-birth abortion in part because it lacked a health exception, in light of what the Court found to be substantial medical authority showing that the procedure could be necessary to protect women’s health. One of the questions raised by *Gonzales v. Carhart*, 550 U.S. 124 (2007), was whether Congress could make factual findings to the contrary of what the Court had found in *Stenberg* with regard to medical necessity, and so obviate the constitutional need for a health exception. In the federalism context, for example, the Supreme Court has held that it is ultimately for the Court and not Congress, through congressional findings, to determine whether activity Congress seeks to regulate has the substantial effects on interstate commerce necessary to bring it within the scope of the Commerce Clause. See *United States v. Morrison*, 529 U.S. 598, 614 (2000) (“[w]hether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court”) (quoting *United States v. Lopez*, 514 U.S. 549, 557 n.2 (1995) (Chief Justice Rehnquist, concurring)). Similarly, in *Gonzales v. Carhart*, 550 U.S. at 165, the Court ultimately concluded that it “retains an independent constitutional duty to review factual findings where constitutional rights are at stake.” If confirmed, I would follow Supreme Court and Fourth Circuit precedent in cases involving the review of congressional findings, as in all matters.

10. **David Fontana wrote an editorial in the *New Republic* on your nomination, “Liberals should rally behind Harris’s nomination, because she embodies, more than any other Obama judicial nominee, all three of the important qualities I previously described for federal judges: She will be a sympathetic vote to liberal causes; she has a great professional network that will give rise to the next generation of liberal legal elites; and she will be an eloquent and inspiring champion of liberal jurisprudence.”³⁸ How do you respond to this characterization of your nomination?**

³⁷ Pamela Harris and Dawn Johnsen, *Supreme Court Preview: Abortion and the “Health Exception,”* ACSBLOG (February 20, 2007), <http://www.acslaw.org/acsblog/supreme-court-preview-abortion-and-the-health-exception/>.

³⁸ David Fontana, *Obama Has Started Making Major Progress on Nominating Judges—and This Is His Most Important One Yet*, NEW REPUBLIC (May 13, 2014), <http://www.newrepublic.com/article/117747/pamela-harris-fourth-circuit-court-why-liberals-should-cheer-her>.

Response: I do not know the author of the article quoted here, and I do not recall ever meeting or speaking with him. To the extent that he is suggesting that I understand the role of a judge to be anything other than coming to cases with an open mind and deciding them based on neutral application of law and precedent to fact, he clearly does not know me and is wholly incorrect. Indeed, my long professional record demonstrates that I fulfill professional obligations without regard to any personal views I might have. I have not given this author or anyone else reason to doubt my deep commitment to the fundamental judicial obligation of impartiality, and I am proud and grateful that those who do know me, including lawyers from diverse backgrounds and varying affiliations, have attested to my integrity, intellect, judgment and fair-mindedness.

11. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**
 - a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."³⁹**
 - i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Response: Yes. The Court expressly confines its holding "to those lawful marriages."
 - ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

Response: I believe the Court was referring to same-sex marriages made legal by the operation of state law.
 - iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes.
 - iv. **Are you committed to upholding this precedent?**

Response: Yes. If confirmed, I would be committed to faithfully following the *Windsor* precedent and all other precedent of the Supreme Court and the Fourth Circuit.

³⁹ *United States v. Windsor*, 133 S.Ct. 2675, 2696 (2013).

- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. If confirmed, I would faithfully apply all portions of the *Windsor* decision and all other decisions of the Supreme Court and Fourth Circuit.

- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. If confirmed, I would faithfully apply all portions of the *Windsor* decision and all other decisions of the Supreme Court and Fourth Circuit.

- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. If confirmed, I would faithfully apply all portions of the *Windsor* decision and all other decisions of the Supreme Court and Fourth Circuit.

- e. **Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”**

- i. **Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

- ii. **Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes. If confirmed, I would faithfully apply all portions of the *Windsor* decision and all other decisions of the Supreme Court and Fourth Circuit.

12. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: The starting point for decision is the plain meaning of the text, whether constitutional, statutory or regulatory. In the absence of precedent directly on point, I would look to precedents of the Supreme Court and Fourth Circuit interpreting related or analogous provisions, or providing general guidance on the interpretive question at issue. If other federal or state courts had addressed the same question, then that precedent might be persuasive authority, as well.

13. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: A judge’s duty is to render decisions based on law and precedent, rather than any political beliefs. As a litigator in private practice, I approached every case with full confidence that the Justices or judges hearing it would be fair and impartial, and would attend carefully and with open minds to the briefs and arguments of the parties. I can assure the Committee that I have a deep and personal understanding of how important that judicial impartiality was to my clients and is to all litigants. I also believe that my record shows that I carry out my professional responsibilities without regard to any political or personal views I may have. In private practice, I represented a broad range of clients – from large corporations to non-profit organizations to indigent individuals – without regard

to any personal views I might have had about their positions. As Executive Director of the Supreme Court Institute at Georgetown University Law Center, I prepared dozens of advocates for their Supreme Court arguments on a first-come, first-served basis, without regard to the position being advanced. And as a teacher, I believed my highest duty was to ensure that all sides of every issue were presented to my class, again apart from any personal views I might have held.

- 14. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I want to assure the Committee that I would take with the gravest seriousness judicial responsibility to decide cases without respect to any personal views and to be fair to all who came before me. I believe I have demonstrated this capacity, in my work as a litigator in private practice, as the Executive Director of the Supreme Court Institute at Georgetown University Law Center, and as a teacher.

- 15. Do you think judges should consider the “current preferences of the society” when ruling on a constitutional challenge? What about when seeking to overrule longstanding Supreme Court or circuit precedent?**

Response: No. A judge’s role is to resolve disputes through impartial application of law and precedent, regardless of whether the outcome is popular or consistent with “current preferences of the society.”

- 16. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?**

Response: The Supreme Court has held that there is room for “play in the joints” between the Free Exercise and Establishment Clauses. As a result, the government may grant permissive accommodations for religious exercise or conscience, even when not required by the Free Exercise Clause, without in so doing violating the Establishment Clause. *See, e.g., Cutter v. Wilkinson*, 544 U.S. 709, 713-14 (2005). If confirmed as a judge, I would follow that precedent in considering questions arising under the religion clauses of the First Amendment.

- 17. Do you believe that the death penalty is an acceptable form of punishment?**

Response: The Supreme Court has held that the death penalty is an acceptable form of punishment, under certain circumstances and so long as proper procedures are followed. *See Gregg v. Georgia*, 428 U.S. 153 (1976). If confirmed as a circuit judge, I would follow Supreme Court and Fourth Circuit precedent in any case involving the death penalty, as in all matters.

18. In *Brown v. Entertainment Merchants Association*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

- a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

Response: Appellate judges should confine themselves to the record on appeal, as developed by the parties to the case. If I were confirmed and an issue arose regarding the possible consideration of evidence outside the record, I would follow the precedent of the Supreme Court and the Fourth Circuit in resolving the issue.

- b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

Response: In resolving any issue that arose regarding reliance on such studies, I would follow the Federal Rules of Evidence and relevant precedent of the Supreme Court and the Fourth Circuit. The Supreme Court has held, for instance, that academic studies and writings may be considered in determining the admissibility of expert testimony. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

19. What is the most important attribute of a judge, and do you possess it?

Response: A judge must be fair and impartial, approaching all questions with an open mind, and committed to applying law and precedent to resolve concrete disputes, based on the briefs and arguments of the parties. I believe I possess those attributes.

20. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: I think the most important elements of appropriate judicial temperament are respectful and courteous treatment of all litigants, diligence and care in the work of the court, and collegiality with respect to all colleagues and court staff. I believe I would meet that standard as a judge.

21. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

22. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: I would be bound to follow and would follow the precedent of the Supreme Court or the Fourth Circuit, even if I believed it erroneous.

- 23. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal court should declare a congressional statute unconstitutional if Congress, in enacting the statute, exceeded the constitutional limits on its authority or if the statute violates constitutional rights. Congressional statutes are entitled to a presumption of constitutionality, and federal courts should take care to avoid the unnecessary resolution of constitutional questions. But in a properly presented case, it is the duty of the federal courts to ensure that Congress has acted within its constitutional authority.

- 24. Please describe your understanding of the workload of the Fourth Circuit. If confirmed, how do you intend to manage your caseload?**

Response: My understanding is that the Fourth Circuit has a large and diverse docket, and that the court's judges work hard to decide cases in a timely manner. If confirmed, I would manage my caseload through hard and diligent work, and by consulting with my colleagues as to the best way to organize my chambers in order to expeditiously and carefully resolve cases.

- 25. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?**

Response: A circuit judge may not overrule circuit precedent while sitting on a panel; such precedent may be reviewed only *en banc* and in the limited circumstances identified by Rule 35(a) of the Federal Rules of Appellate Procedure. Even in such a case, adherence to precedent is so important to the stability of the law that mere disagreement with a particular decision would not be sufficient grounds for overruling it. If confirmed, in the limited instances where these preconditions for reconsidering a circuit precedent were met, I would follow *stare decisis* principles set out in Supreme Court and Fourth Circuit precedent.

- 26. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: I fully recognize that the role of a judge is entirely different from the role of an advocate. If confirmed as a judge, my role would be to apply governing law and precedent impartially to the facts of a particular case. In order to do that, I would come to each case with an open mind, and start by studying the decision below, the record on appeal, and the constitutional, statutory or regulatory text at issue. I would analyze the relevant precedent and carefully consider the briefs and arguments of the parties and the

views of my colleagues. On that basis, I would reach the decision that correctly applies the law to the facts of the case.

I expect that if I were confirmed, the transition to the work of a Fourth Circuit judge would bring certain challenges, such as organizing a chambers to facilitate the careful but prompt resolution of cases, learning the distinct procedures of the Fourth Circuit, and better familiarizing myself with Fourth Circuit case law. I would expect to devote substantial time and effort to meeting those challenges, and to draw on the wisdom and generosity of my colleagues in doing so.

- 27. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work and interaction with colleagues on the Court?**

Response: I believe that collegiality is an important element of the work of a Circuit Court, and if confirmed, I would look forward to working respectfully and collaboratively with my colleagues. At the end of the day, my decisions would be based on my own best view of the correct application of governing law and precedent to the facts of a case. But I would give very careful consideration to the views of the other judges who had heard the same case and studied the same materials as I had. Being open to my colleagues' views has benefitted my work throughout my career, and I would expect it to do the same if I were confirmed as a judge.

- 28. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

Response: The Supreme Court did not decide what standard of scrutiny would apply to Second Amendment challenges to federal or state gun laws in *District of Columbia v. Heller*, 554 U.S. 570 (2008), or *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), though it did indicate in *Heller* that rational-basis review was not appropriate, 554 U.S. at 628 n.27. The Fourth Circuit has adopted a two-part approach to Second Amendment claims under *Heller*, first conducting a "historical inquiry" into "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantees," and second, if so, "applying an appropriate form of means-end scrutiny." *Woollard v. Gallagher*, 712 F.3d 865, 874-75 (4th Cir. 2013) (quoting *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010)). The Fourth Circuit has "assume[d] that any law that would burden the fundamental, core right of self-defense in the home by a law-abiding citizen would be subject to strict scrutiny," *id.* at 876 (internal citation omitted), and has applied intermediate scrutiny to restrictions on possession by domestic violence misdemeanants, *see Chester*, 628 F.3d at 682-83, and on laws restricting conduct outside the home, *see Woollard*, 712 F.3d at 876. If confirmed, I would follow Supreme Court and Fourth Circuit precedent in any case raising a Second Amendment challenge.

- 29. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias,**

increase the number of trial lawyers serving on individual Senator's judicial selection committees".

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

- 30. Please describe with particularity the process by which these questions were answered.

Response: I read the questions with care, consulted my records and undertook legal research as necessary, and drafted answers. I discussed my answers with a Justice Department attorney in the Office of Legal Policy. I made subsequent revisions and finalized my answers for submission.

- 31. Do these answers reflect your true and personal views?

Response: Yes.

**Questions for the Record
Senator Ted Cruz**

**Pamela Harris
Nominee, United States Circuit Judge for the Fourth Circuit**

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: The only judicial philosophy that I would bring to the bench if confirmed is that judges should reach decisions through impartial application of law and precedent to the facts before them. Judges have a limited but important role to play in our system of government. They do not make law. They serve the public and advance the rule of law by faithfully applying law and precedent to resolve the concrete disputes before them, based on the particular facts of a case and the briefs and arguments of the parties. If confirmed, I would not expect the substance of my decisions to accord with those of any particular Justice, as I would be applying the precedent of the Supreme Court as a whole. I was privileged to clerk for Justice John Paul Stevens, however, and I would seek to emulate his commitment to precedent, which he understood to reflect the wisdom of judges who had come before him; the degree to which he grounded his opinions in the facts of each case; and the respect and courtesy he showed all parties before him as well as his colleagues and Supreme Court staff.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed as a circuit court judge, I would follow Supreme Court and Fourth Circuit precedent in applying originalist methodologies to constitutional provisions. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), for instance, the Supreme Court relied principally on the text of the Second Amendment as those words would have been understood in ordinary usage at the time of the amendment's adoption. In other cases, the Supreme Court has relied on the historical background of a constitutional provision to better discern its meaning, as reflected in sources like The Federalist Papers, English common law or colonial history. See, e.g., *Printz v. United States*, 521 U.S. 898 (1997); *Crawford v. Washington*, 541 U.S. 36 (2004). I would follow this and other relevant Supreme Court and Fourth Circuit precedent in using originalism in any constitutional case that came before me.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a circuit court judge, I would have no authority to overrule Supreme Court precedent, and faithfully would apply such precedent in all circumstances. Nor could I overrule Fourth Circuit precedent while sitting on a panel; such precedent may be reviewed only *en banc* and in the limited circumstances identified by Rule 35(a) of the Federal Rules of Appellate Procedure. Even in such a case, adherence to precedent is so important to the stability

of the law that mere disagreement with a particular decision would not be sufficient grounds for overruling it. In the limited instances where these preconditions for reconsidering a circuit precedent were met, I would follow *stare decisis* principles set out in Supreme Court and Fourth Circuit precedent.

Explain whether you agree that “State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power.” *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed as a circuit judge, I would be bound to follow *Garcia v. San Antonio Metro Transit Authority*, 469 U.S. 528 (1985), as I would all Supreme Court precedent. In cases decided subsequent to *Garcia*, the Supreme Court has held that the Constitution protects state sovereignty interests through judicially enforceable limits on federal power. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 488 U.S. 1041 (1992). I would faithfully apply all relevant Supreme Court and Fourth Circuit precedent in any case seeking to enforce federalism-based limits on the federal government.

Do you believe that Congress’ Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has identified three “categories of activity” that Congress may regulate under the Commerce Clause and Necessary and Proper Clause: “the use of the channels of interstate commerce,” “the instrumentalities of interstate commerce, or persons or things in interstate commerce,” and “those activities that substantially affect interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). In *United States v. Lopez* and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court invalidated federal statutes as exceeding Congress’ Commerce Clause authority, and in both cases it emphasized the non-economic nature of the activity in question in holding that it lacked the requisite “substantial effects” on interstate commerce. *Lopez*, 514 U.S. at 560-61, 566-67; *Morrison*, 529 U.S. at 610-11, 613. Neither case held that Congress never could regulate non-economic activity under the Commerce Clause, and in *Gonzales v. Raich*, 545 U.S. 1 (2005), the Supreme Court held that Congress could regulate the local possession and use of marijuana because “failure to regulate that class of activity would undercut” a larger regulatory regime directed at economic activity. *See* 545 U.S. at 18, 26; *id.* at 37 (Justice Scalia, concurring) (“Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.”). If confirmed, I would faithfully apply all relevant Supreme Court and Fourth Circuit precedent to the particular facts of any case involving Congress’ power under the Commerce Clause.

What are the judicially enforceable limits on the President’s ability to issue executive orders or executive actions?

Response: The Supreme Court has held that the President’s ability to issue executive orders “must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet &*

Tube Co. v. Sawyer, 343 U.S. 579, 585 (1952). Whether the President has acted within such authority is evaluated by the Supreme Court under the “tripartite scheme” laid out in Justice Jackson’s concurring opinion in the *Youngstown* case. See *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown*, 343 U.S. at 635 (Jackson, J., concurring)). If confirmed, I would faithfully apply all relevant Supreme Court and Fourth Circuit precedent in evaluating the legality of executive orders or actions.

When do you believe a right is “fundamental” for purposes of the substantive due process doctrine?

Response: The Supreme Court has held that a right is “fundamental” for purposes of the substantive due process doctrine if as an “objective[]” matter it is “deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotations and citations omitted). In applying that standard, the Supreme Court has required a “careful description” of the asserted fundamental right, and used “[o]ur Nation’s history, legal traditions, and practices” as the “crucial guideposts for responsible decisionmaking.” *Id.* (internal quotations and citations omitted). If confirmed as a circuit judge, I would follow this approach, and all relevant Supreme Court and Fourth Circuit precedent, in any case involving asserted fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that a limited set of classifications are subject to heightened scrutiny under the Equal Protection Clause. Classifications that are “so seldom relevant to the achievement of any legitimate state interest” that they are deemed to reflect impermissible discrimination, such as those based on race, are subject to strict scrutiny. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Classifications that “frequently bear[] no relation to ability to perform or contribute to society,” such as those based on gender, are subject to intermediate scrutiny. *Id.* (quoting *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973)). If confirmed, I would follow Supreme Court and Fourth Circuit precedent regarding application of heightened scrutiny under the Equal Protection Clause.

Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: In *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), the Supreme Court stated its expectation that twenty-five years from the time of its decision, racial preferences would no longer be necessary in public higher education. If confirmed, I would apply that precedent, along with *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and any other relevant Supreme Court or Fourth Circuit precedent in evaluating the constitutionality of such preferences. As in any case I heard as a judge, I would follow that precedent and apply it to the specific facts before me without regard to any personal expectations I might or might not have.

Senator Chuck Grassley
Questions for the Record

Pamela Harris
Nominee, United States Circuit Judge for the Fourth Circuit

1. In your response to question 2(b) of my questions for the record, you said that you “believe that the Supreme Court appropriately may exercise restraint in a prudential sense, deciding cases narrowly – what I referred to as ‘tak[ing] small steps, not [] big steps’ – so that contentious social issues are resolved to the greatest extent possible by the democratic process.”¹ But in the same response, you also said that “in issuing a decision, whether narrow or broad, the role of any court is to apply law and precedent to the facts, without regard to public opinion on the underlying issue or whether that decision will be popularly received.”²

You stated that it is appropriate for courts to ensure “that contentious social issues are resolved to the greatest extent possible by the democratic process” by “deciding cases narrowly.” How should courts determine whether cases implicate “contentious social issues” if they are to decide cases “without regard to public opinion”?

Response: The Supreme Court has described itself as exercising restraint in cases involving matters of significant “public concern” that are the subject of substantial “democratic action,” allowing such issues to be decided by the democratic process. *Washington v. Glucksberg*, 521 U.S. 702, 716 (1997). In *Glucksberg*, for example, in declining to recognize a constitutional right to physician-assisted suicide, the Supreme Court reviewed an extensive series of state-level ballot initiatives and legislative changes, *id.* at 716-19, concluding that “[t]hroughout the Nation, Americans are engaged in an earnest and profound debate” over physician-assisted suicide, and that its holding would “permit[] this debate to continue, as it should in a democratic society,” *id.* at 735. I do not believe that the Supreme Court understands itself, in such cases, to be rendering decisions based on public opinion, but rather to be applying constitutional law and precedent in a way that defers to an actively engaged democratic process. *Id.* at 716. More specifically, I do not believe the Supreme Court, in such cases or any others, bases its decisions on what it perceives to be the weight of public opinion on an issue or on whether it believes its ruling will be well received by the public. If confirmed as a circuit judge, I would follow Supreme Court and Fourth Circuit precedent on any question regarding deference to the political process, and base decisions on impartial application of law and precedent to fact without regard to whether they would enjoy popular support.

¹ Pamela Harris, Response to Sen. Grassley’s Questions for the Record, at 2(b).

² *Id.*

2. In your response to question 4(b) of my questions for the record, you said that “‘the preferences’ to which [you] w[ere] referring” were “principles like equality and liberty and individual dignity.”³ While on an ACS panel, you stated that “[p]eople often ask: show me, prove to me that you’re doing this honestly, show me where your *personal policy preferences* diverge from the Constitution. Show me that you’re not just reading them to be the same thing”⁴ (emphasis added).

- a. Were you suggesting that people ask you to show where “principles like equality and liberty and individual dignity,” which “virtually all of us” agree with, “diverge from the Constitution”?

Response: No. To the contrary, I was suggesting that general principles like equality, liberty and individual dignity are both embraced by virtually all Americans, myself included, and reflected in the Constitution. I made that observation in the course of explaining why I rejected the suggestion that there is a need for a “better” Constitution.

- b. Where do your personal beliefs as to what government ought to do diverge from “[your] own best reading of [what] the Constitution” requires, permits, or prohibits?

Response: Thank you for the opportunity to clarify. The point of my original comments was that the Constitution was a forward-thinking document for its day, given the general principles – such as liberty and equality – contained therein, and that I generally embraced those principles personally, as well. In other words, I did not suggest then – nor am I suggesting now – that my personal beliefs diverge from the general principles reflected in the Constitution. But most importantly, if I were confirmed as a judge, I would assume a role in which my commitment to the Constitution would become a matter of solemn obligation: As a circuit judge, it would be my duty to decide cases arising under the Constitution according to that document’s text and Supreme Court and Fourth Circuit precedent construing it, regardless of any personal beliefs I might have, and I would faithfully carry out that duty.

³ Pamela Harris, Response to Sen. Grassley’s Questions for the Record, at 4(b).

⁴ Pamela Harris, Panelist, “The ACS National Convention: Keeping Faith with the Constitution,” American Constitution Society, June 19, 2009 (“People often ask (in panels like this): Show me, prove to me that you’re doing this honestly, show me where your personal policy preferences diverge from the Constitution. Show me that you’re not just reading them to be the same thing. And I always feel unapologetically, you know, left to my own devices, my own best reading of the Constitution, it’s pretty close to where I am. Because I think the Constitution is a profoundly progressive document. I think it’s born of a progressive impulse. I think particularly, as amended in the Reconstruction era, it is committed to principles like equality and liberty and individual dignity, and I’m a profoundly liberal person so we [the Constitution and I] match up pretty well. I make no apologies for that. I think it’s a great document. And I think as amended, and as interpreted, and the method, with the people of good will, applying the methodology that’s talked about in this book, it is something we can all be really proud of.”).

3. Do you believe that “social movements reconstitute what it is we’re talking about when we talk about American constitutional tradition”?⁵ Or is “the only sense in which [you] believe that constitutional provisions or principles evolve” is when “[c]ourts are sometimes called upon to apply those original provisions to new facts or circumstances, and in that sense, their application may change over time”?⁶ Please explain.

Response: I believe that constitutional provisions or principles “evolve” only in the sense that courts may apply those original provisions to new facts or circumstances over time. This understanding was the foundation of my work as a Supreme Court and appellate litigator. My arguments always were premised on the interpretive approaches employed and endorsed by the Supreme Court and appellate courts.

On the academic panel from which the first quoted remark is taken, I was suggesting that social movements play a role in shaping popular discussion and public understandings of general constitutional principles like equality. My comment was not focused on judicial decision-making, and I did not mean to suggest that judges do or should base their decisions on social movements or their agendas. I understand decisions like *Brown v. Board of Education*, 347 U.S. 483, 492-94 (1954), for instance, which I had been discussing earlier on the panel, to be based only on the original equal protection principle of the Fourteenth Amendment, applied by the Supreme Court in 1954 to the contemporary circumstances then before it. I can assure the Committee that if confirmed as a judge, I would faithfully follow the methodological precedents of the Supreme Court and the Fourth Circuit, basing decisions only on the interpretive sources used by those courts, and doing so without regard to any comments I might have made on a panel.

⁵ Pamela Harris, Panelist, “Our Enduring Constitution: Applications and Interpretations,” American Constitution Society, June 14, 2008.

⁶ Pamela Harris, Response to Sen. Grassley’s Questions for the Record, at 6(a).

Senator Grassley
Questions for the Record

Pamela Pepper,
Nominee, U.S. District Judge for the Eastern District of Wisconsin

1. What is the most important attribute of a judge, and do you possess it?

Response: While a good judge possesses many attributes—patience, humility, organization—the most important attribute is the ability to set aside personal views and beliefs and base decisions on applying the relevant law to the facts of each case. I believe that I have demonstrated those attributes as a judge on the bankruptcy court, and would continue to do so if confirmed to serve on the district court.

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: The appropriate temperament for a judge is the ability to listen patiently and respectfully to the arguments of all parties, then to decide their disputes with integrity and efficiency, and to clearly explain the bases for those decisions. Patience, the ability to listen without prejudging, and integrity are the most important elements of that temperament. I believe that I have demonstrated those elements during my tenure on the bench.

3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I serve on the bankruptcy court, and am bound by Supreme Court precedent, Seventh Circuit precedent, and the decisions of district courts reviewing appeals of my decisions. Those precedents are binding, and I follow them. I would continue to follow binding precedent from the Supreme Court and the Seventh Circuit if confirmed to serve on the district court.

4. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In my service on the bench, I have begun by looking at the language of the relevant statute, regulation or rule. If that language is not clear, or is ambiguous, I look to rules of statutory construction, analogous statutory or regulatory schemes, and, if there are any, decisions from higher courts that have considered similar issues, as persuasive authority.

5. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the decision of the higher court.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Because of the presumption that federal statutes are constitutional, it is appropriate for a federal court to declare a statute unconstitutional only in those instances where it is clear that the statute violates a specific provision of the Constitution, and only if the court must address constitutionality in order to resolve the case.

7. **In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community,” in determining the meaning of the Constitution? Please explain.**

Response: I do not believe it is ever proper for judges to rely on the law of foreign countries, or the views of such countries or communities, in interpreting the United States Constitution.

8. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I offer the Committee evidence in the form of my nine years of service on the bankruptcy court. Over those years, I have made hundreds of decisions based on precedent and the law, and not any political ideology or motivation.

9. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I offer the Committee the evidence of my record of service on the bankruptcy court. I have not based decisions on my personal views, and have been fair and impartial to every litigant who appeared before me. I would continue to do so if confirmed to serve on the district court.

10. **If confirmed, how do you intend to manage your caseload?**

Response: I would use similar case management procedures to the ones I have used on the bankruptcy court. I use several electronic systems to track the status of cases—an

“under advisement” report, a report regarding the status of pending business case deadlines, and various motion and objection reports. Such systems are critical in bankruptcy court, given the high case load, and I believe they would work equally well to manage a district court case load.

- 11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Judges play a critical role in controlling the pace and conduct of litigation. If confirmed, I would employ internal systems for monitoring the pace and status of criminal cases (subject to the Speedy Trial Act) and civil cases. In civil cases, I would use pretrial conferences and status conferences to encourage thoughtful, targeted discovery plans; monitor and quickly resolve discovery disputes; consider the use of oral rulings on dispositive motions; and set firm trial dates.

- 12. As a bankruptcy judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: In reaching any decision, I begin with the relevant provision of the Bankruptcy Code or the relevant rule (usually the Federal Rules of Bankruptcy Procedure or the Federal Rules of Evidence). If the parties agree on the meaning of the statute or rule, I apply it to the particular facts, after hearing argument from the parties. If the parties dispute the meaning of the statutory provision or the rule, I request briefing, and also conduct my own research regarding any binding or persuasive case law. I base the resulting decision on those sources.

- 13. If confirmed, how do you believe your experience as a bankruptcy judge will help you as a federal district judge?**

Response: A bankruptcy judge hears cases ranging from those involving individual debtors or creditors to those involving multi-million dollar corporate entities. Bankruptcy judges often must consider other areas of law, such as criminal law, environmental law, family law and tax law, in resolving bankruptcy questions. Bankruptcy judges must expeditiously move large dockets, involving cases of all sizes and in all stages of litigation, and are constantly aware that delay rarely benefits any party. If confirmed to the district court, all of these experiences would assist me in efficiently managing the broad array of litigation that court must handle.

- 14. What do you anticipate will be the greatest challenge transitioning from a federal bankruptcy court's docket to a federal district court's docket?**

Response: A bankruptcy court is not required to balance the demands that the Speedy Trial Act imposes on the criminal docket against the need for efficient and timely resolution of civil cases; if confirmed, I will work to balance those demands. I will also

educate myself on the particular procedural demands of intellectual property cases, a growing segment of the district court case load.

15. **President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: I am not aware of the full context of this quotation. I believe that judges should decide all cases, whether difficult or not, by applying the relevant law to the facts. A judge’s responsibility, obligation and oath is to set aside the judge’s personal views and beliefs, and to decide all cases based on the Constitution, applicable statutes, regulations, rules and precedent.

16. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

- a. **In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹**

- i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Response: Yes.

- ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?**

Response: I believe that Justice Kennedy referred to those marriages authorized by state law.

- iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: That is my understanding.

- iv. **Are you committed to upholding this precedent?**

Response: Yes.

¹ *United States v. Windsor*, 133 S.Ct. 1675 at 2696.

- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²
- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
- Response: Yes.
- ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- Response: Yes. The *Windsor* decision is binding precedent, and I will give this and all other portions of the decision full force and effect.
- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³
- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
- Response: Yes.
- ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- Response: Yes. The *Windsor* decision is binding precedent, and I will give this and all other portions of the decision full force and effect.
- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴
- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
- Response: Yes.

² *Id.* 2689-2690.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes. The *Windsor* decision is binding precedent, and I will give this and all other portions of the decision full force and effect.

- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"⁵

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes. The *Windsor* decision is binding precedent, and I will give this and all other portions of the decision full force and effect.

17. According to the website of American Association of Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

⁵ *Id.* (internal citations omitted).

- 18. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on July 1, 2014. I drafted responses, and sent those responses to the Department of Justice for review. After finalizing the responses, I submitted them for transmission to the Committee.

- 19. Do these answers reflect your true and personal views?**

Response: Yes.

Questions for the Record

Senator Ted Cruz

Pamela Pepper,

Nominee, U.S. District Court for the Eastern District of Wisconsin

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: A judge's obligation is to fairly decide disputes based on the Constitution, applicable statutes, rules, regulations and precedent, setting aside personal views and opinions. My judicial philosophy seeks to fulfill that obligation by patiently and respectfully hearing the arguments of all parties, and then rendering a timely and clearly-reasoned decision. I am not sufficiently familiar with the individual judicial philosophies of the members of the Warren, Burger or Rehnquist Courts to identify a particular justice with a philosophy similar to my own.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: Yes. The Supreme Court has utilized originalism—particularly, original public meaning—to interpret the Constitution in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008). That decision and others constitute binding precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: Lower court judges do not have the authority to overrule binding precedent. I have not done so as a bankruptcy judge; I could not and would not do so as a district court judge, if confirmed.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The *Garcia* decision remains binding precedent. As a lower court judge, I would apply this, and all other binding precedent, regardless of my personal views or opinions.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: While the Supreme Court has found unconstitutional federal statutes regulating non-economic activity as violating the Commerce Clause, *see, e.g., United States v. Lopez*, 514 U.S. 549 (1995), the Court also has held that Congress may regulate "purely local" activities, "though [they] may not be regarded as commerce," which "have a substantial effect on interstate

commerce." *Gonzales v. Raich*, 545 U.S. 1, 17 (2005) (internal citations omitted). If confirmed to serve on the district court, I would follow all binding Supreme Court and Seventh Circuit precedent regarding Congress' authority under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The judicial authority in question first must have jurisdiction over a controversy ripe for determination. If such a controversy exists, the Supreme Court has held that the judiciary has the authority to review whether the President's authority to issue such orders or take such actions comes either from the Constitution or from an act of Congress. *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 529, 585 (1952)).

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: A fundamental right, under the substantive due process doctrine, is one which is "objectively, 'deeply rooted in this Nation's history and tradition' . . . and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations omitted). I will follow this precedent and all precedent if confirmed.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that certain classifications—race, religion, national origin, gender—as well as classifications which burden a fundamental right, are subject to heightened levels of scrutiny under the Equal Protection Clause. *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 472 U.S. 432, 440 (1995). If confirmed, I will follow Supreme Court and Seventh Circuit precedent regarding relevant levels of scrutiny under the Equal Protection Clause.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed, I will follow the binding precedent in *Grutter* and other cases ruling on the constitutionality of admissions policies based on particular classifications, and will not rule based on predictions or expectations.

Senator Grassley
Questions for the Record

Brenda Kay Sannes,
Nominee, U.S. District Judge for the Northern District of New York

1. **Your responses to the Committee's questionnaire indicate that 90% of your practice has consisted of prosecuting criminal cases The District to which you have been nominated handled well over twice as many civil cases as criminal cases in 2012.¹**

- a. **How are you preparing to handle the civil cases that will make up a majority of your docket if you are confirmed?**

Response: In the event that I am fortunate enough to be confirmed, I have solicited advice from several judges regarding how to prepare to handle civil cases. I have reviewed materials which I received from the Federal Judicial Center regarding civil practice, including the "Civil Litigation Management Manual" and "The Elements of Case Management: A Pocket Guide for Judges." I have also begun reviewing slip opinions issued by the Second Circuit Court of Appeals in civil cases involving issues that are likely to arise in the Northern District of New York.

- b. **Can you tell me a little about the extent of your familiarity with the Federal Rules of Civil Procedure?**

Response: I apply the Federal Rules of Civil Procedure in my work as the Appellate Chief in the United States Attorney's Office for the Northern District of New York, where I have been responsible for all of the criminal and civil appeals for the past eight years. In most of our civil appeals we have defended rulings on motions to dismiss under Rule 12 or motions for summary judgment under Rule 56. I have also worked on civil cases involving adverse summary judgment rulings under Rule 56, and provided guidance regarding whether to recommend an affirmative government appeal. When I was in civil practice I followed the Federal Rules of Civil Procedure in litigating discovery motions, summary judgment motions, motions to dismiss, and in civil trials.

2. **Your responses to the Committee's questionnaire provided little in the way of examples of your legal writing. Is there anything further you could share with the Committee to ease any doubts that may exist about whether your experience has prepared you for a lifetime appointment?**

¹ 1,740 civil cases were filed in the Northern District of New York during the 12-month period ending in March 31, 2013, see *Federal Judicial Center Caseload Statistics 2013*, Table C, available at <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/C00Mar13.pdf>, and just 514 criminal cases were filed in the Northern District of New York during the 12-month period ending in March 31, 2013, see *Federal Judicial Center Caseload Statistics 2013*, Table D, available at <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/D00CMar13.pdf>.

Response: During the past eight years as the Appellate Chief in the United States Attorney's Office for the Northern District of New York, I have had extensive experience in writing and editing appellate briefs filed in the Second Circuit Court of Appeals. In addition to editing most of the appellate briefs filed by our office, I have handled my own appellate caseload. I have written approximately eleven appellate briefs a year for the past eight years. Several of the cases in which I have written the appellate brief and handled the oral argument have resulted in published decisions creating new law in the circuit, including *United States v. Cook*, 722 F.3d 477 (2d Cir. 2013), *United States v. Wilson*, 699 F.3d 235 (2d Cir. 2012), *United States v. Ramos*, 685 F.3d 120 (2d Cir. 2012), *United States v. Guzman*, 591 F.3d 83 (2d Cir. 2010), *United States v. Hester*, 589 F.3d 86 (2d Cir. 2009) and *United States v. Richardson*, 521 F.3d 149 (2d Cir. 2008).

3. **In the recently-decided *Abramski v. United States*,² the Supreme Court was divided over how and when to apply the rule of lenity in the construction of criminal statutes. Under which circumstances would you apply the rule, if at all, and if so, how would you do so?**

Response: If confirmed as a district judge, I would follow the precedent of the Supreme Court and the Second Circuit in applying the rule of lenity. The Supreme Court has held that the rule of lenity "only applies if after considering text, structure, history and purpose, there remains a grievous ambiguity or uncertainty in the statute such that the Court must simply guess as to what Congress intended." *Maracich v. Spears*, 133 S. Ct. 2191, 2209 (2013).

4. **If you were to find yourself sentencing a defendant who you thought was innocent, or who had been convicted under a statute you considered unjust, how would you go about sentencing the defendant? Would these concerns factor into your determination?**

Response: I would begin every sentencing proceeding by calculating the Sentencing Guidelines range. I would then consider the statutory sentencing factors in 18 U.S.C. § 3553(a), which include the Sentencing Guidelines range, to impose a sentence that is "sufficient but not greater than necessary" to comply with the purposes in § 3553(a)(2), as required by § 3553(a). I understand that federal crimes are defined by Congress, and that Congress sets sentencing policy. I would apply that law without regard to my personal beliefs.

5. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

² 134 S.Ct. 421 (2013).

a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”³

i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

Response: Yes.

ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?

Response: I believe that Justice Kennedy is referring to “same-sex marriages made lawful by the State.” 133 S. Ct. at 2695.

iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

Response: Yes.

iv. Are you committed to upholding this precedent?

Response: Yes. If confirmed as a district judge, I would faithfully apply the *Windsor* decision and all other Supreme Court and Second Circuit precedents.

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”⁴

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: I understand this portion of the opinion to be stating a settled principle of law.

ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. If confirmed as a district judge, I would faithfully apply the *Windsor* decision and all other Supreme Court and Second Circuit precedents.

³ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

⁴ *Id.* 2689-2690.

c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”⁵

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: I understand this portion of the opinion to be stating a settled principle of law.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. If confirmed as a district judge, I would faithfully apply the *Windsor* decision and all other Supreme Court and Second Circuit precedents.

d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁶

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: I understand this portion of the opinion to be stating a settled principle of law.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. If confirmed as a district judge, I would faithfully apply the *Windsor* decision and all other Supreme Court and Second Circuit precedents.

e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁷

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: I understand this portion of the opinion to be stating a settled principle of law.

⁵ *Id.* 2691.

⁶ *Id.* (internal citations omitted).

⁷ *Id.* (internal citations omitted).

- ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed as a district judge, I would faithfully apply the *Windsor* decision and all other Supreme Court and Second Circuit precedents.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: I believe that the most important attribute of a judge is to be fair and impartial. A judge should approach each case with an open mind, listen carefully to the parties' positions, and faithfully apply binding precedent. I believe that I possess this attribute and, if confirmed, would constantly strive to be fair and impartial.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe that a judge should be open-minded, fair, patient, respectful, thoughtful, diligent and humble. I believe that I have demonstrated these qualities throughout my legal career and, if confirmed to serve as a district judge, would be committed to demonstrating these qualities in my work as a judge.

8. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: If confirmed as a district judge, I would be committed to faithfully following precedent, regardless of my personal beliefs.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In cases of first impression with no controlling precedent I would begin with the text of the applicable provision. If the language was unambiguous, I would apply the provision as written. If the text did not resolve the issue, I would apply the canons of statutory construction. I would consider decisions from other circuit courts of appeal and other district courts which addressed the issue. I would also look to case law from the Supreme Court, circuit courts of appeal and other district courts in analogous cases.

10. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed as a district judge, I would apply precedent faithfully, without regard to my personal beliefs.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A statute enacted by Congress is presumed to be constitutional. Under the doctrine of constitutional avoidance, a district court should avoid declaring a statute unconstitutional if there is a plausible alternative interpretation. A federal court should declare a statute unconstitutional only in the rare circumstance when Congress has clearly exceeded its authority under the Constitution in enacting the statute or when the statute violates the Constitution. If confirmed as a district judge, I would apply the standards established by the Supreme Court and the Second Circuit Court of Appeals in considering the constitutionality of a statute.

12. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.

Response: No, it not proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution.

13. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I assure the Committee that if I am confirmed as a district judge my decisions would be grounded in precedent and the text of the law rather than an underlying political ideology or motivation. I have performed my responsibilities as a federal prosecutor, enforcing federal criminal law for the past twenty-five years, without any underlying political ideology or motivation.

14. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I assure the Committee that if I am confirmed as a district judge I would put aside any personal views and treat everyone appearing before me fairly, with respect and consideration. During my work as a federal prosecutor I believe that I have developed a reputation for fairness and that I have treated defense counsel, witnesses, victims and defendants fairly and with respect.

15. If confirmed, how do you intend to manage your caseload?

Response: I have experience managing a heavy caseload as the Appellate Chief in my office, responsible for all of the office’s appellate work, and the management of the appellate caseload. If confirmed as a district judge, I would take an active role in managing

my caseload, utilizing the reports that are available under the district court's electronic filing system. I would establish reasonable and firm deadlines for discovery and trial and, at the same time, encourage the parties to consider settlement options. I would work diligently to promptly rule on motions. I would explore other ways in which I could effectively manage the caseload.

- 16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I believe that a district court judge has a critical role in controlling the pace and conduct of litigation. If confirmed as a district judge, I would play an active role in managing my cases, ensuring that the Speedy Trial Act is followed in criminal cases, and that reasonable, firm deadlines are set in all cases. I would work diligently to promptly rule on motions. I would explore other ways in which I could work to control my docket.

- 17. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: I understand that the role of an advocate is entirely different from the role of a district judge. If confirmed as a district judge, I would approach each case with an open mind; carefully and respectfully consider each party's position; faithfully apply binding precedent; and work diligently to issue decisions promptly. If there is no binding precedent I would look for guidance in analogous case law from the Supreme Court or Second Circuit, as well as other circuit court and district court decisions. I expect that the most difficult part of the transition for me would be the challenge of learning civil practice and new areas of civil law.

- 18. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes,**

please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

- 19. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on July 1, 2014. I researched and drafted my response to the questions and provided a draft response to the Department of Justice Office of Legal Policy on July 2, 2014. I reviewed them with a representative of that office on July 2nd and July 3rd, and asked that my responses be submitted to the Committee after that review.

- 20. Do these answers reflect your true and personal views?**

Response: Yes.

**Questions for the Record
Senator Ted Cruz**

**Responses by Brenda K. Sannes,
Nominee, U.S. District Judge for the Northern District of New York**

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I believe that a district judge should approach each case with an open mind; carefully and respectfully consider each party's position; faithfully apply binding precedent; and work diligently to issue decisions promptly. I am not familiar enough with the judicial philosophies of the Supreme Court Justices from the Warren, Burger or Rehnquist Courts to opine on which Justice's judicial philosophy is most analogous with mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed as a district judge, I would follow the precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit regarding the interpretation of the Constitution. The Supreme Court has stated that "*the public understanding* of a legal text in the period after its enactment or ratification" is a "critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis in original).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a district judge I would not, and could not, overrule precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed as a district judge, I would be bound to follow *Garcia*, without regard to any personal agreement or disagreement with its reasoning.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has identified three general categories of regulation within Congress' Commerce Clause power. Congress may: (1) "regulate the channels of interstate commerce"; (2) "regulate and protect the instrumentalities of interstate commerce, and persons or things in interstate commerce"; and (3) "regulate activities that substantially affect interstate

commerce.” *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005); see also *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). If confirmed as a district judge I would follow the Supreme Court and Second Circuit precedent regarding the limits of Congress’ Commerce Clause authority.

What are the judicially enforceable limits on the President’s ability to issue executive orders or executive actions?

Response: The Supreme Court has stated that the President’s authority to act “must stem either from an act of Congress or from the Constitution itself.” *Medellin v. Texas*, 552 U.S. 491, 524 (2008); see *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The Court has noted that the President’s authority is “at its maximum” when the President acts pursuant to an express or implied authorization of Congress; that the President can “only rely upon his own independent powers” when he acts without a congressional grant or denial of authority; and that the President’s power “is at its lowest ebb” when the President “takes measures incompatible with the expressed or implied will of Congress.” *Medellin*, 552 U.S. at 524-25. If confirmed as a district judge I would follow the Supreme Court and Second Circuit precedent defining the limits of executive action.

When do you believe a right is “fundamental” for purposes of the substantive due process doctrine?

Response: The Supreme Court has stated that the Due Process Clause “protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). If confirmed as a district judge I would follow the Supreme Court and Second Circuit precedent regarding whether a right is “fundamental” for purposes of the substantive due process doctrine.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that classifications by race and national origin are subject to strict scrutiny. See *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Classifications based on alienage ordinarily are subject to strict scrutiny. See *Bernal v. Fainter*, 467 U.S. 216, 219-20 (1984). Classifications based upon gender and illegitimacy are subject to heightened review. See *Cleburne*, 473 U.S. at 440-41. If confirmed as a district judge I would follow Supreme Court and Second Circuit precedent in determining what classifications are subject to heightened scrutiny under the Equal Protection Clause.

Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed as a district judge I would follow the precedent established by the Supreme Court in *Grutter* and *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013), and any applicable Second Circuit precedent. I do not know how the controlling precedent will evolve in the next fifteen years.

Senator Chuck Grassley
Questions for the Record
Patricia M. McCarthy
Nominee, Judge for the U.S. Court of Federal Claims

1. **Your Senate Questionnaire indicates that your time practicing before the Court of Federal Claims was largely devoted to a single contract termination case. In addition to contract cases, the Court of Federal Claims adjudicates cases pertaining to tax, Fifth Amendment Takings, military and civilian pay, and many other types of claims against the federal government brought by many diverse claimants.**

- a. **Do you have any experience in these other areas within the jurisdiction of the Court of Claims?**

Response: Yes. In addition to numerous actions filed in the Court of Federal Claims involving various types of government contracts and fraud counterclaims, I have acted as attorney of record in cases filed in the Court involving Fifth Amendment Takings, civilian pay, and procurement challenges, among other statutory and constitutional claims. As a supervisory attorney for the past 11 years, I have been personally involved in cases filed in the Court involving government contracts, fraud counterclaims, procurement challenges, military and civilian pay, Fifth Amendment Takings, and various other types of statutory and constitutional claims brought against the United States.

In addition, between 2011 and 2013, I served as Editor-in-Chief of *Inside 717*, which is a publication for all members of the United States Court of Federal Claims Bar Association that summarizes, in a neutral fashion, new and noteworthy cases issued in each of the Court's diverse areas of subject-matter jurisdiction, and I obtained familiarity with those subject areas of the Court's jurisdiction in which I have not been personally involved as either attorney of record or a supervisory attorney. Moreover, I have served as a member of the Board of Governors of the Court's bar association and attended judicial and bench and bar conferences.

- b. **What assurances or evidence can you give the Committee that you will be able to preside over the wide range of cases that arise in the Court of Federal Claims?**

Response: In addition to having substantial experience, as either attorney of record or as supervisory attorney, in numerous diverse areas of the Court's subject-matter jurisdiction, I have demonstrated, throughout my career, an ability to quickly master various technical and specialized areas of law. For example, in 2003, when I was promoted to a supervisory attorney, I assumed responsibility for assisting in the management of the Commercial Litigation Branch's international trade group, whose attorneys appear in the Court of International Trade and the Court of Appeals for the Federal Circuit, and represent the

government in highly technical and specialized areas of law. These were areas of law with which I had had little familiarity at the time, but I successfully achieved the necessary knowledge and understanding of the complex statutory and regulatory schemes underlying the claims presented in customs and trade cases.

More recently, in 2008, I had the privilege of leading a team of government attorneys in the first state-to-state arbitration ever brought in what was then known as the London Court of International Arbitration (now LCIA). Because the Department of Justice typically does not represent the United States in international arbitrations, this high-profile arbitration against Canada required my co-counsel and me, as counsel of record, to obtain, on a highly-expedited basis, a thorough understanding of the substantive law and procedures of international arbitration. The United States ultimately prevailed.

Given my extensive base of substantive expertise in many of the Court's areas of subject-matter jurisdiction, and my demonstrated ability, throughout my career, to quickly learn and master new and complex areas of law, I can assure the Committee that I will be able to preside over the wide range of cases that arise in the Court of Federal Claims, should I be so fortunate as to be confirmed and appointed as a Judge of the Court.

2. **As an attorney for the Department of Justice it is your responsibility to zealously represent the United States. If confirmed, how do you plan to transition to neutrally presiding over cases?**

Response: The role of advocates, which is to zealously represent their clients' interests by advancing good-faith positions reasonably based in law and fact, differs greatly from that of a judge, which is to ascertain the law through a neutral examination of applicable constitutional provisions, statutes, regulations, and judicial precedent, and then impartially apply that law to thoroughly-understood facts. Should I be fortunate to be confirmed and appointed as a judge of the Court of Federal Claims, I would be fully mindful of, and committed to, my obligation to act in an impartial, neutral, transparent, and fair manner. I would draw upon experience in working with members of the private and public bars of multiple courts to find common ground among practitioners. In transitioning into the role of a judge, I would approach a case from a neutral position, ascertain the law in an unbiased manner, gain a thorough understanding of the facts, and then faithfully apply the law to the facts of the case. I would then communicate that process in language that is clear and accessible to allow all parties to have respect for and confidence in the decision, even if they do not necessarily agree with the outcome.

3. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: As an advocate, I would never want to appear before a judge whose conduct and decision-making are influenced by personal views. I can assure the Committee that,

were I fortunate to be confirmed and appointed as a judge of the Court, I would treat all who appear before me with impartiality, fairness, and respect. As evidence, during my 20-year career as an advocate for the United States, I have consistently advanced positions that are in the government's best interests, without regard to my personal views. Before I joined the Department of Justice, I represented a variety of private clients for over five years, without regard to my personal views. Finally, I have worked with members of the bars of the Court of Federal Claims, the Court of International Trade, and the Federal Circuit, to find common ground and believe that I have a reputation for fairness, collegiality, and integrity.

4. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: As a career government attorney representing the United States over the course of multiple administrations, I have never allowed my legal analysis to be in any way affected by political ideology or motivation. If I were fortunate to be confirmed, I can assure the Committee unequivocally that each and every one of my decisions would be grounded in the text of the law and in precedent interpreting that text, without regard to any political ideology or motivation.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: A judge must possess, above all, an abiding respect for the rule of law. I possess this attribute.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be fair, patient, well-prepared, and fully engaged in the law, the record, and the parties' respective positions. A judge should also be firm and efficient, while respectful toward all who appear in the courtroom, including counsel, witnesses, clerks, court staff, and members of the public. Further, a judge must behave always with dignity and respect for the Court's rules and procedures. I consider all of these elements of judicial temperament to be important, and I believe I meet them all.

7. **If confirmed, how do you intend to manage your caseload?**

Response: If I were fortunate to be confirmed and appointed as a judge of the Court of Federal Claims, I would manage my caseload by conducting weekly docket reviews with my law clerks and judicial assistant, reviewing new complaints immediately upon their filing and assignment, and engaging the parties in status conferences to ensure the expeditious and efficient resolution of the claims presented, including through alternative dispute resolution where appropriate. In addition, I would consult with more experienced colleagues regarding their views of the best practices in case management. Most

importantly, I would undertake to issue decisions in cases as expeditiously as possible, without compromising careful analysis and full and complete consideration of the parties' positions.

- 8. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. Judges play a critical role in controlling the pace and conduct of litigation. In addition to the specific steps outlined in my response to Question 7, if I were fortunate to be confirmed, I would ensure that scheduling orders are clear and achievable and enforce them to ensure that litigation is efficiently resolved.

- 9. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.**

Response: Should I be fortunate to be confirmed and appointed as a judge of the Court of Federal Claims, I would be wholly committed to faithfully following and giving full force and effect to Supreme Court and Federal Circuit precedent.

- 10. In your view, are there particular challenges facing the Court of Claims? Do you see any areas where improvement is needed?**

Response: Currently the Court of Federal Claims faces an increasingly heavy caseload, particularly in the form of procurement challenges brought by disappointed bidders and offerors. Because the relief sought in those cases is injunctive in nature, they tend to be highly expedited. Accordingly, the Court currently must ensure that, within its limited resources, it can efficiently resolve expedited procurement challenges while not delaying resolution of its other cases. If confirmed, I would work hard to ensure that the Court functions as effectively as possible, including working to improve the Court if necessary, but I am not now in a position to identify any specific area where improvement is needed.

Senator Grassley
Questions for the Record

Responses of Jeri Kaylene Somers
Nominee, U.S. Court of Federal Claims

1. You have served as a judge in a variety of settings, including the U.S. Air Force, the U.S. Department of Transportation Board of Contract Appeals, and the U.S. Civilian Board of Contract Appeals. If confirmed, what lessons or principles have you learned from these experiences that you will take with you to the Court of Claims?

Response: As a judge in these various settings, I have learned that it is important to examine the facts carefully, with an open mind, and to treat each litigant fairly. My experience in each of these forums has enabled me to become more effective and efficient in evaluating the legal issues presented by each case. However, each case is different. I have learned that, at times, guiding the parties through alternative dispute resolution procedures as an alternative to traditional litigation can be the most effective way of resolving the issues that brought the parties to the forum. Another important lesson that I have learned is that the parties appreciate a quick resolution to their disputes, because lengthy litigation is costly and inefficient. If confirmed, I would use my experience to quickly evaluate each case, assist the parties in exploring the various options available to them, and, ultimately, as necessary, issue a decision that is fair, understandable, and consistent with precedent.

2. What assurances or evidence can you give this Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I believe that a judge must be impartial and fair, approaching each case with an open mind, regardless of any personal views or beliefs. Throughout my judicial career, I have handled hundreds of cases. I have always treated each litigant fairly without regard to my personal views. I believe my record demonstrates my commitment to the principles of fairness required of a judge.

3. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: As a judge I have consistently ensured that my decisions are guided by precedent and the text of the law. I have never issued a decision based upon political ideology or motivation. If confirmed, I would continue this practice.

4. What is the most important attribute of a judge, and do you possess it?

Response: The most important attributes of a judge are integrity and impartiality. A judge should act with the highest degree of integrity in deciding cases and when interacting with the parties and counsel appearing before the court. A judge must always maintain impartiality, examining each case objectively and with an open mind, guided by binding precedent.

Throughout my judicial career, and before, whether serving as an Air Force judge advocate, as a litigator representing the United States, or as an attorney representing companies in the private sector, I have demonstrated these attributes.

5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and, do you meet that standard?

Response: A judge should be fair, patient, impartial, even-handed, and even-tempered to the parties that appear before the tribunal. A judge must also be willing to do the work, carefully examining the materials submitted by counsel, and being open-minded to the positions advocated by each side. It is essential that litigants feel that they have been heard, understood, and treated fairly. Finally, the judge must apply the law to the facts of a particular case, mindful of precedent and without bias. I have conducted myself consistently with this standard throughout my legal career.

6. If confirmed, how do you intend to manage your caseload?

Response: Case management is essential to ensure the matters are resolved timely. I proactively manage my current caseload, promptly convening scheduling conferences at the beginning of a case, with regularly scheduled status conferences to ensure the timely progression of a case. If confirmed, I would continue this practice at the U.S. Court of Federal Claims.

7. Do you believe that judges have a role in controlling the pace and conduct of litigation, and, if confirmed, what steps would you take to control your docket?

Response: Yes, I believe that judges have an important role in controlling the pace and conduct of litigation. I hold regular status conferences with the parties to ensure that cases stay on schedule, and I encourage parties to attempt to resolve issues through alternative dispute resolution methods when appropriate. I also resolve motions quickly to ensure cases progress as expeditiously as possible.

8. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents"

Response: The decisions of the Supreme Court and the Federal Circuit are binding on the Civilian Board of Contract Appeals, and I have faithfully applied precedent to our cases. I will continue to follow precedent should I be confirmed to the Court of Federal Claims, regardless of whether I personally agree or disagree with the precedent.

9. In your view, are there particular challenges facing the Court of Claims? Do you see any areas where improvement is needed?

Response: The Court of Federal Claims faces the same challenges as the other courts in the federal judiciary, including budgetary constraints and an increasingly complex caseload. If

confirmed, I would support the Chief Judge as she works to improve the functioning of the court. However, at this time, I do not possess the knowledge that would enable me to identify specific areas needing improvement.



AMERICAN BAR ASSOCIATION

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VIA EMAIL AND FIRST-CLASS MAIL

May 9, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Pamela Ann Harris to the United States
Court of Appeals for the Fourth Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Pamela Ann Harris who has been nominated for a position on the United States Court of Appeals for the Fourth Circuit. The Committee is of the opinion that Ms. Harris is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Ms. Harris.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Professor Pamela Ann Harris (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

May 9, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on May 9, 2014.

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
152 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

June 20, 2014

Dear Chairman Leahy and Ranking Member Grassley:

We write in strong support of the nomination of Pamela A. Harris to the United States Court of Appeals for the Fourth Circuit and urge prompt consideration and confirmation of her nomination.

As her classmates in the Yale Law School Class of 1990, we have known Pam for more than 25 years. We all believe that Pam would be a tremendous asset to the appellate bench.

In law school, Pam stood out for her keen intellect, her grasp of legal issues, her intellectual curiosity, her integrity and her fair-mindedness. Because of those qualities, Pam was often able to forge bonds and build consensus among classmates with very different views.

Many of us have kept in touch with Pam since law school and are familiar with her outstanding legal career. Pam's breadth of experience makes her exceptionally well-suited to serve as a judge on the federal appeals court. After law school, Pam clerked for two distinguished jurists, Judge Harry T. Edwards of the United States Court of Appeals for the District of Columbia Circuit, and Justice John Paul Stevens of the United States Supreme Court. Since then, Pam has served in the United States Department of Justice, represented businesses and other clients in private practice, taught such subjects as constitutional law and appellate practice as a law professor, and served on the boards of directors of both national and local legal and educational organizations.

Of particular relevance to the Court of Appeals, Pam is a recognized national expert in appellate advocacy, having served as Executive Director of the Georgetown Law Center's Supreme Court Institute and Co-Director of Harvard Law School's Supreme Court and Appellate Practice Clinic.

Pam has devoted a significant portion of her career to pro bono work. She has represented numerous nonprofit and public interest organizations as well as individuals. Pam served as Co-Chair of the Amicus Committee of the National Association of Criminal Defense Lawyers, and she established a pro bono program at the law firm O'Melveny & Myers, focusing on Maryland cases, where she handled cases herself and supervised and mentored junior lawyers. Pam has mentored law students and junior lawyers throughout her career. She received a prestigious legal teaching award at the University of Pennsylvania Law School and has been recognized as a popular and highly respected professor at Penn, Georgetown and Harvard Law Schools.

Pam grew up in Bethesda, Maryland, and graduated at the top of her class from Walt Whitman High School there. For the last 15 years, Pam and her family have lived in Potomac, Maryland,

just a few miles away from her childhood home. Pam is as invested in her community as she is in appellate practice, serving in roles that range from membership on the Board of Trustees at the Norwood School to “cookie mom” for her daughter’s Girl Scout troop.

We believe Pam to be exceptionally well-qualified and well-suited to serve on the Fourth Circuit Court of Appeals. We urge the Judiciary Committee and the full Senate to promptly review and confirm Pamela Harris for a position on that Court.

Please do not hesitate to contact any of us if you have any questions.*

Sincerely,

Amy Adler
Emily Kempin Professor of Law, NYU School of Law

William D. Araiza
Professor of Law, Brooklyn Law School

Lori Bamberger
Saving Neighborhood Energy

Jeffrey A. Bartos
Guerrieri, Clayman, Bartos & Parcelli, PC

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Senior Corporate Counsel, Aetna

Rob Bergdolt
Partner, DLA Piper LLP

Eric Blank
President, Community Energy Solar

Linda Blumenthal

James L. Brochin
Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP

Cornell Brooks
President and CEO, New Jersey Institute for Social Justice

Edmund C. Burns

Michael Caglioti

* Please note that all organizational affiliations are listed for identification purposes only.

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April L. Cherry
Professor of Law, Cleveland-Marshall College of Law, Cleveland State University

Hiram E. Chodosh
President, Claremont McKenna College

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Professor of Law, Washington University of St. Louis

Lovely Dhillon
Vice President, ORS Impact

Tom Dolgenos
Chief, Federal Litigation, Philadelphia District Attorney's Office

Steven Dow

Beverly Dyer
Assistant Federal Public Defender, Office of the Federal Public Defender

Robert Falk
General Counsel, Human Rights Campaign

Robert Feinstein

Nancy Field

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Professor of Law and Values, University of Toledo College of Law

Jonathan S. Franklin
Partner, Norton-Rose Fulbright

Ari Q. Fitzgerald
Partner, Hogan Lovells US LLP

Robert Griffen
Verizon

Vernon C. Grigg III
Golden Gate Law School

Steven H. Hartmann
Associate General Counsel, Verizon Communications

Tanya K. Hernandez
Professor of Law, Fordham Univ. School of Law

Hilary Hochman

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Assistant Professor of Medicine
University of Maryland School of Medicine.

John P. Irwin
Partner, Irwin & Hsuan LLP

Kurt H. Jacobs
Counsel, Sidley Austin LLP

David Kahan
Senior Counsel, Millennial Media, Inc.

Paul E. Kalb, M.D.
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Robert A. Kelly
Deputy General Counsel, DreamWorks Animation SKG, Inc.

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Owner, Coal Emissions Reduction Technologies, LLC

Kyle Logue
Wade H. and Dores M. McCree Collegiate Professor of Law, University of Michigan Law School

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Consolidated Electrical Distributors, Inc.

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Carolyn Reiser

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Clinical Professor & Co-Director, Pro Bono Research Project, Rutgers School of Law

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Douglas Rutzen
President and CEO, International Center for Not-for-Profit Law

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Aimee Wolfson

David Yassky
Dean, Pace University School of Law

Edward S. Zas
Senior Attorney and Director of Training, Federal Defenders of New York, Inc.

Rebecca E. Zietlow

**The Leadership Conference
on Civil and Human Rights**

1629 K Street, NW 202.466.3311 voice
10th Floor 202.466.3435 fax
Washington, DC www.civilrights.org
20006



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Educational Fund, Inc.
Michael B. Keegan
People for the American Way
Boz King
International Union, UAW

June 23, 2014

Confirm Pamela Harris to the U.S. Court of Appeals for the Fourth Circuit

Dear Senate Judiciary Committee Member:

On behalf of The Leadership Conference on Civil and Human Rights, we write to express our strong support for the confirmation of Pamela Ann Harris to serve on the U.S. Court of Appeals for the Fourth Circuit. At every stage in her career, Pamela Harris has distinguished herself through her outstanding intellectual credentials, her independence of thought, and her strong respect for the rule of law, establishing herself beyond question as qualified and ready to serve on the court. In addition, she has demonstrated an unwavering integrity and an outstanding commitment to public service.

The Leadership Conference believes Pamela Harris will be an impartial, thoughtful, and highly-respected addition to the court. She graduated *summa cum laude* from Yale College in 1985 and received her J.D. from Yale Law School in 1990. After law school, she was a law clerk for Judge Harry T. Edwards of the U.S. Court of Appeals for the D.C. Circuit. She spent one year as an associate at Shea & Gardner (now Goodwin Procter LLP) before clerking for Justice John Paul Stevens of the Supreme Court. From 2010-2012, served at the Department of Justice as Principal Deputy Assistant Attorney General in the Office of Legal Policy.

Ms. Harris has devoted her career largely to academia and public service, excelling in both. She has demonstrated a commitment to improving the fair administration of justice and educating new lawyers. In 1996, she joined the faculty of the University Of Pennsylvania Law School, where she taught courses in criminal procedure and received the Harvey Levin Memorial Teaching Award in 1998. At O'Melveny & Myers LLP, where she was counsel, Harris specialized in appellate and Supreme Court litigation and was named partner in 2005. During her ten years in private practice, Harris has become a renowned Supreme Court and appellate advocate, appearing in approximately 100 federal appellate cases. In addition, Harris established a cooperative program between O'Melveny and the Maryland Office of Public Defender, through which the firm provides pro bono representation to indigent criminal defendants appealing their convictions in state court.

Notably, Harris has used her uniquely broad experience as an appellate litigator to prepare the next generation of legal advocates and improve the judiciary. She was a visiting professor at Georgetown University Law Center and executive director of the law school's Supreme Court Institute. As executive director, she managed and participated in a moot court program that prepares advocates for oral argument before the Supreme Court. During her tenure, she worked with lawyers representing a multitude of interests. For example she assisted both the offices of state attorneys general and lawyers for criminal defendants; helped to improve arguments by lawyers bringing civil rights actions and those defending



June 23, 2014

Page 2 of 2

against civil rights actions; and worked with attorneys representing both plaintiffs and defendant corporations. She has also served as lecturer and co-director of the Supreme Court and Appellate Practice Clinic at Harvard Law School.

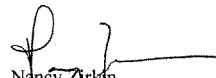
The Leadership Conference believes that Pamela Harris is an extraordinarily gifted nominee, with the ability to make objective decisions on the multifaceted and prominent cases that will surely come before the court. Her impeccable credentials have garnered her the support of a diverse group of attorneys in the legal community and people across the political spectrum. Harris' rich diversity of experience makes her an excellent choice for the U.S. Court of Appeals for the Fourth Circuit, and we urge the Senate Judiciary Committee to promptly move forward with her confirmation.

Thank you for your time and consideration. If you have any questions, please feel free to contact Nancy Zirkin, Executive Vice President, at Zirkin@civilrights.org or (202) 466-2880, or Sakira Cook, Counsel, at cook@civilrights.org or (202) 263-2894.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President

June 20, 2014

The Honorable Patrick J. Leahy
Chairman

The Honorable Chuck Grassley
Ranking Member

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Pamela Harris as Circuit Judge,
United States Court of Appeals for the Fourth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We write in enthusiastic support of the nomination of Pamela Harris to the U.S. Court of Appeals for the Fourth Circuit. We are lawyers from diverse backgrounds and varying affiliations, but we are united in our admiration for Pam's skills as a lawyer and our respect for her integrity, her intellect, her judgment, and her fair-mindedness.


Many of us have had the opportunity to work with Pam on appellate matters. She has been co-counsel to some of us, opposing counsel to others, and a valuable colleague to all. In her appellate work, Pam has demonstrated extraordinary skill. She is a quick study, careful listener, and acute judge of legal arguments. She knows the value of clarity, candor, vigor, and responsiveness. Of equal importance, she has always conducted herself with consummate professionalism, grace, and collegiality, and has a humble and down-to-earth approach to her work.

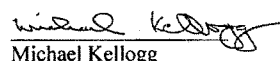
After 20-plus years devoted largely to federal appellate practice, Pam is naturally suited to serve as a federal appellate judge. She clerked, first, on the United States Court of Appeals for the D.C. Circuit for Judge Harry Edwards and then on the U.S. Supreme Court for Associate Justice John Paul Stevens. In private practice, she represented a wide range of clients (both corporate and individual) before the U.S. Supreme Court and in the U.S. Courts of Appeals. She was Lecturer and Co-Director of the Supreme Court and Appellate Practice Clinic at Harvard Law School. She was then appointed as Executive Director of the highly regarded Supreme Court Institute at the Georgetown University Law Center, which is heavily involved in preparing advocates for their appearances before the United States Supreme Court. She served as Principal Deputy Assistant Attorney General in the Office of Legal Policy at the United States Department of Justice. And she has taught Constitutional Law and Criminal Procedure at the University of Pennsylvania and at Georgetown. Her well-rounded experience makes her well prepared for the docket of a federal appellate court. Pam's substantive knowledge, intellect, and low-key temperament will be great assets for the position for which she has been nominated.

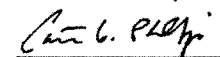
The Honorable Patrick J. Leahy
 The Honorable Chuck Grassley
 United States Senate
 Committee on the Judiciary
 June 20, 2014
 Page 2

We expect that the Senate, after full inquiry, will see the strengths we know from first-hand experience with Pam. Pamela Harris has exceptional legal ability and personal character, and we urge the Senate to confirm her to be a Circuit Judge.

Sincerely,


 Gregory G. Garre
 Latham & Watkins LLP


 Michael Kellogg
 Kellogg, Huber, Hansen, Todd
 Evans & Figel, PLLC


 Carter Phillips
 Sidley Austin LLP

Scott H. Angstreich, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
 Donald B. Ayer, Jones Day
 Dori K. Bernstein, Georgetown University Law Center
 Richard D. Bernstein, Willkie, Farr & Gallagher, LLP
 Rebecca A. Beynon, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
 Lisa S. Blatt, Arnold & Porter LLP
 Steven Gill Bradbury, Dechert LLP
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 Don O. Burley, Partner, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
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 William S. Dodge, Hastings College of the Law
 Scott M. Edson, O'Melveny & Myers LLP
 Clifton S. Elgarten, Crowell & Moring LLP
 Roy T. Englert, Jr., Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP

* Although we list our affiliations below, all of us are signing this letter in our personal capacities.

The Honorable Patrick J. Leahy
 The Honorable Chuck Grassley
 United States Senate
 Committee on the Judiciary
 June 20, 2014
 Page 3

Mark L. Evans (retired), Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
 Bartow Farr
 James A. Feldman, University of Pennsylvania Law School
 David C. Frederick, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
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 Lauren R. Goldman, Mayer Brown LLP
 Thomas C. Goldstein, Goldstein & Russell, P.C.
 Irving L. Gornstein, Georgetown University Law Center
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 Mark E. Haddad, Sidley Austin LLP
 Mark C. Hansen, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
 Scott Blake Harris, Harris Wiltshire & Grannis LLP
 Derek T. Ho, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
 Richard B. Katskee, Mayer Brown LLP
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 Wan J. Kim, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
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 Christopher Landau, Kirkland & Ellis LLP
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 Mark A. Perry, Gibson Dunn & Crutcher LLP
 Andrew J. Pincus, Mayer Brown LLP
 Stephen J. Pollak, Goodwin Proctor LLP
 David A. Reiser, Zuckerman Spaeder LLP

The Honorable Patrick J. Leahy
 The Honorable Chuck Grassley
 United States Senate
 Committee on the Judiciary
 June 20, 2014
 Page 4

John A. Rogovin, Executive Vice President & General Counsel, Warner Bros. Entertainment Inc.
 E. Joshua Rosenkranz, Orrick, Herrington & Sutcliffe LLP
 Charles A. Rothfeld, Mayer Brown LLP
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 Paul R.Q. Wolfson, Wilmer Cutler Pickering Hale and Dorr LLP
 Christopher J. Wright, Harris Wiltshire & Grannis LLP

June 23, 2014

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We write in strong support of Pamela Harris' nomination to the United States Court of Appeals for the Fourth Circuit. As current and former partners in the Washington, D.C., office of O'Melveny & Myers LLP, each of us practiced law with Pam and has witnessed firsthand her outstanding legal talent. Moreover, as former colleagues with Pam, we can attest to her collegiality, temperament, and judgment. We are confident that she possesses the professional and personal qualifications to be an excellent judge.

As a member of the firm's appellate practice, Pam enjoyed a reputation as one of the best brief writers and strategists in the firm. She was the principal author of well-written and important briefs on behalf of a range of clients.

On behalf of Circuit City, for example, Pam argued for enforcement of its employment arbitration agreements. On behalf of Mobil Corporation, Pam wrote a petition challenging the constitutionality of efforts to try thousands of individual asbestos cases through mass aggregation in state courts. Pam's brief argued that the contemplated mass adjudication of thousands of different claims against hundreds of defendants would violate the Due Process Clause by unduly hindering Mobil's right to defend itself. The brief also argued that pre-trial review was necessary because the potential for enormous liability imposed by unfair proceedings would pressure defendants like Mobil to settle even meritless claims, rendering post-trial review an impossibility.

Pam was also the primary author of an amicus brief on behalf of a bipartisan group of House members (Members Dingell and Tauzin were the lead amici) in defense of the Federal Trade Commission's "do not call" rule. And in *Schaeffer v. Weast*, 546 U.S. 49 (2005), Pam authored an amicus brief in the United States Supreme Court supporting the Montgomery County, Maryland, public school system. The case arose under the Individuals with Disabilities Education Act and concerned the status of the "individualized education programs" developed by public schools for each covered student. The Supreme Court agreed with Pam's position and ruled for the Montgomery County schools.

Appreciation for Pam's work extended beyond the firm's appellate practice and appellate clients. In fact, she was regularly sought after by partners across practice groups to think through briefing strategy and argument presentation in a range of cases, at earlier stages in litigation. Pam's work on behalf of Merck in class action litigation involving a former painkiller drug highlights this range in her practice beyond traditional appellate work. Working with trial teams from O'Melveny's D.C. and L.A. offices, Pam was active in pre-trial briefing and strategy on a range of discovery and evidentiary issues. Pam often found herself engaged in this type of cross-

Hon. Chairman Patrick Leahy and Hon. Ranking Member Chuck Grassley
June 23, 2014

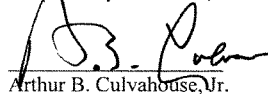
practice and inter-office collaboration, and the firm's clients were especially appreciative of the opportunity to have an appellate lawyer of Pam's caliber work on some of their most difficult problems.

Pam also found the time throughout her tenure at O'Melveny to maintain an active *pro bono* practice. As Co-Chair of the National Association of Criminal Defense Lawyers (NACDL) Amicus Committee, Pam helped to provide the Supreme Court and countless indigent defendants with high-quality briefing on issues affecting the administration of criminal justice throughout the country. Given the disparity in the quality of representation afforded to many defendants in criminal cases, Justices from across the ideological spectrum have come to rely on the excellent lawyering provided by NACDL. Pam also helped to establish and supervise a partnership between O'Melveny and the Maryland Office of the Public Defender, Appellate Division, under which the firm's lawyers handled appeals for the Public Defender on a *pro bono* basis. This program, which continues today, provides many of the firm's younger lawyers with an opportunity to get courtroom experience.

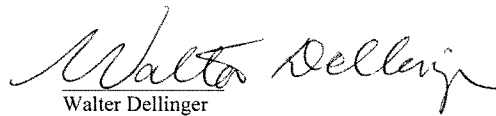
Pam approached all of her work with the utmost level of professionalism, objectivity, and dedication, and we believe she would bring these same qualities to the federal bench. Whether she was working on a brief for a criminal defendant or a major oil company, Pam's singular focus was ensuring that her client received first-rate legal representation. And she did so while also demonstrating many of the qualities that made her such an extraordinary colleague—from her willingness to mentor and support younger lawyers to her openness to helping her law partners with a section of their brief or mooted them for an upcoming argument.

We conclude by noting that the signatories of this letter span the political and jurisprudential spectrum. Some of us have served in Republican Administrations or worked for Republican Senators, while others have served in Democratic Administrations or worked for Democratic Senators. Some of us are members of the Federalist Society, while others are members of the American Constitution Society. Our ranks include a former White House Counsel to President Ronald Reagan, top Commerce Department and Justice Department officials to Presidents George W. Bush and Bill Clinton, and senior aides to President Barack Obama. Although we may not all share Pam's views on a range of legal and political issues, we are united in the belief that Pam possesses the intellect, fair-mindedness, humility, and fundamental decency to make an excellent federal judge.

Respectfully submitted,



Arthur B. Culvahouse, Jr.



Walter Dellinger

K. Lee Blalack II
Brian Boyle
Brian Brooks
Danielle C. Gray
Jonathan Hacker

Theodore W. Kassinger
Jeffrey W. Kilduff
Ron Klain
Greta Lichtenbaum
Richard Parker

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee
United States Senate
Washington, DC 20510

June 27, 2014

Dear Chairman Leahy and Ranking Member Grassley:

I write in strong support of Pamela Harris's nomination to the United States Court of Appeals for the Fourth Circuit.

I served as the Senior Vice President, General Counsel and Secretary of The Hertz Corporation from 1998 to 2007. Although it may seem surprising that a car and equipment rental company would face issues with a constitutional dimension, that did indeed occasionally happen. When it did, I turned to Ms. Harris for advice and assistance. The views expressed in this letter regarding her qualifications to serve as a judge are informed by my interactions with her while at Hertz; I hasten to add that those views are my own and do not represent the views of my former employer, for which I cannot speak.

In my dealings with Ms. Harris, I found her to be highly intelligent, quick to grasp issues, creative in her approach to problems, fair in her judgments, and direct in her advice. When discussing legal matters, she was incisive, objective and principled; it surely helped that she knew the law so well and could speak with authority on the subjects at hand, without a hint of defensiveness or dogmatism. She also was an excellent writer, whose work exhibited the same clarity, honesty and force that she showed in conversation. (She was, moreover, able to write quickly and with little need for revision; she seems to be one of those people who gets things right the first time.) In short, Ms. Harris was a model of professionalism as a practicing lawyer — someone who engendered trust and respect. I note that all those qualities are also vital for a judge, and especially for a judge on a court as important as the Fourth Circuit.

Ms. Harris's academic achievements, meanwhile, speak for themselves. After graduating from Yale Law School, she served as a law clerk for Judge Harry T. Edwards on the D.C. Circuit and for Justice John Paul Stevens on the Supreme Court. Ms. Harris has also taught at Harvard Law School, the University of Pennsylvania School of Law, and at the Georgetown University Law Center, where she was the Executive Director of the Supreme Court Institute, a unique and respected project dedicated to improving advocacy before the Supreme Court.

In sum, I believe that Ms. Harris is an ideal candidate for an appellate court judge. As her academic credentials demonstrate, she has a first-rate intellect. Equally important, she is a mature and able lawyer with significant experience in practice, no small part of which consisted of high-quality advocacy for business enterprises. Beyond that, she conveys a sense of fundamental decency, without which her intellectual abilities and

professional skills would be for naught. I have no doubt that she would bring to the important judicial seat for which she has been nominated the same qualities that have made her an excellent lawyer, and that she would instill confidence in all litigants that their cases would be decided carefully and fairly. I urge you to confirm her nomination.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Harold Rolfe". The signature is written in dark ink and is positioned above the printed name.

Harold E. Rolfe



June 23, 2014

Senator Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Charles Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Nomination of Pamela Harris to the United States Court of Appeals for the Fourth Circuit*

Dear Senators Leahy and Grassley:

On behalf of the National Women's Law Center (the "Center"), an organization that has worked since 1972 to advance and protect women's legal rights, we write in strong support of the nomination of Pamela Harris to the United States Court of Appeals for the Fourth Circuit.

Ms. Harris is exceedingly well-qualified to serve on this important court. She graduated from Yale College and Yale Law School. She clerked for Judge Harry T. Edwards on the United States Court of Appeals for the District of Columbia Circuit, and for Associate Justice John Paul Stevens on the United States Supreme Court. Following her clerkships, Ms. Harris served as an Attorney-Advisor in the Office of Legal Counsel at the United States Department of Justice for two years before joining the faculty at the University of Pennsylvania Law School, where she received the Harvey Levin Memorial Teaching Award in 1998. Ms. Harris then joined the law firm of O'Melveny & Myers LLP as counsel, becoming a partner in 2005. During her ten years with O'Melveny & Myers, Ms. Harris served as the Co-Director of the Harvard Law School Supreme Court and Appellate Practice Clinic, and taught at Georgetown University Law Center as a visiting professor. In 2009, she left O'Melveny & Myers and joined the Georgetown University Law Center as the Executive Director of the Supreme Court Institute. In 2010, she became the Principal Deputy to the Assistant Attorney General in the Office of Legal Policy at the United States Department of Justice. She rejoined the Georgetown faculty as a visiting professor of law in 2012.

Ms. Harris' legal career reflects excellence, a dedication to public service, and the best contributions of the legal profession to the public interest. During her career, Ms. Harris has appeared in over 100 federal appellate cases, and argued before the Supreme Court. This record reflects her considerable experience, and the brilliant advocacy for which she is properly renowned. In addition to honing her skills as an exceptionally talented litigator in the private

sector, Ms. Harris has spent a good part of her career in government service and in teaching aspiring lawyers. Further, Ms. Harris has shown her dedication to the public interest and to improving the administration of justice throughout her career. While at O'Melveny & Myers, she had a robust pro bono practice and established a cooperative program between O'Melveny and the Maryland Office of the Public Defender, through which the firm represents indigent criminal defendants appealing their convictions in state court. She also has worked to improve the quality of appellate advocacy as co-director of Harvard Law School's appellate advocacy clinic and as Director of Georgetown's Supreme Court Institute. In that latter capacity, she led the work of the Institute, which provides pro bono assistance preparing advocates for oral argument before the Supreme Court on a first-come, first-served basis, to elevate the quality of arguments heard by the Justices. In addition to her contributions to the legal profession in private practice, public service, and academia, Ms. Harris has served on the boards of directors of several nonprofit organizations, including the Norwood School in Potomac, Maryland. Ms. Harris' many accomplishments are reflected by the unanimous "Well-Qualified" rating she received from the ABA Standing Committee on the Federal Judiciary.

The Center has had several opportunities to work with Ms. Harris. In particular, Ms. Harris served as co-counsel with the Center in representing Mr. Roderick Jackson before the Supreme Court in 2005, in *Jackson v. Birmingham Bd. of Ed.*, 544 U.S. 167 (2005). Mr. Jackson was a teacher and girls' basketball coach in Birmingham, Alabama. He described practice and game conditions for the girls' team that were inferior to those provided to the boys' team, and complained to school administrators. He was fired as a coach after doing so, costing him his coaching salary and full retirement. Ms. Harris was part of the legal team that litigated his case before the Supreme Court, successfully arguing that Title IX provided a cause of action for retaliation for those seeking to secure compliance with the law. Working with Ms. Harris in *Jackson* allows us to personally attest to her outstanding legal skills, judgment, and analytical thinking, as well as to her excellent temperament and collegiality.

Ms. Harris' litigation experience, commitment to improving the administration of justice, and dedication to the public interest make her exceedingly well-suited for the position to which she has been nominated. In addition, Ms. Harris' confirmation would increase the diversity on the Fourth Circuit, making her only the sixth female judge to ever sit on this court. For all of these reasons, the Center offers its strong support of Pamela A. Harris to the United States Court of Appeals for the Fourth Circuit and urges you to support her nomination. If you have questions or if we can be of assistance, please contact us at (202) 588-5180.

Sincerely,



Nancy Duff Campbell
Co-President



Marcia D. Greenberger
Co-President

Cc.: Judiciary Committee



AMERICAN BAR ASSOCIATION

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the Federal Judiciary**
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VIA EMAIL AND FIRST-CLASS MAIL

May 2, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Chief Judge Pamela Pepper to the United
States District Court for the Eastern District of Wisconsin

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Chief Judge Pamela Pepper who has been nominated for a position on the United States District Court for the Eastern District of Wisconsin. The Committee is of the opinion that Chief Judge Pepper is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Chief Judge Pepper.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Pamela Pepper (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

May 2, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on May 2, 2014.



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VIA EMAIL AND FIRST-CLASS MAIL

May 9, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: **Nomination of Brenda Kay Sannes to the United States
District Court for the Northern District of New York**

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Brenda Kay Sannes who has been nominated for a position on the United States District Court for the Northern District of New York. The Committee is of the opinion that Ms. Sannes is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Ms. Sannes.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Brenda Kay Sannes, Esq. (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

May 9, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on May 9, 2014.

**NOMINATIONS OF STEPHEN R. BOUGH,
NOMINEE TO BE DISTRICT JUDGE FOR
THE WESTERN DISTRICT OF MISSOURI;
ARMANDO OMAR BONILLA, NOMINEE TO
BE JUDGE OF THE COURT OF FEDERAL
CLAIMS; WENDY BEETLESTONE, NOMINEE
TO BE DISTRICT JUDGE FOR THE EASTERN
DISTRICT OF PENNSYLVANIA; MARK A.
KEARNEY, NOMINEE TO BE DISTRICT
JUDGE FOR THE EASTERN DISTRICT OF
PENNSYLVANIA; JOSEPH F. LEESON, JR.,
NOMINEE TO BE DISTRICT JUDGE FOR THE
EASTERN DISTRICT OF PENNSYLVANIA;
AND GERALD J. PAPPERT, NOMINEE TO
BE DISTRICT JUDGE FOR THE EASTERN
DISTRICT OF PENNSYLVANIA**

THURSDAY, JULY 24, 2014

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:15 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Whitehouse and Grassley.

Senator WHITEHOUSE. Well, I was going to call this hearing to order, but it looks like it has come to order on its own. It must be the distinguished presence of Senator McCaskill and Senator Toomey here.

We welcome both of you. I understand that Senator Casey will be joining us shortly. I welcome my Ranking Member, Senator Grassley, who has agreed with me that rather than make our opening statements first and have the Senators who have candidates before us wait through all that, we will proceed directly with those Senators so they can go on about their business. And then we will make our opening statements afterwards.

So we will begin with Senator McCaskill. You are recognized to make your statement in support of your nominee, and we welcome you to the Judiciary Committee.

PRESENTATION OF STEPHEN R. BOUGH, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI, BY HON. CLAIRE McCASKILL, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator McCASKILL. Thank you, Senator Whitehouse, and thank you, Senator Grassley. I know you all do great work here and have an awesome responsibility in terms of moving these nominees through so they can take their place on the bench and judicial economies can be realized by having a full complement of judges to hear cases.

I better turn that off before I go any further.

Typically, I do not bring a sheet of paper to talk off of when I talk about nominees that I have urged the White House to put in play because I know them pretty well, and this is no exception, except I was afraid I would forget all the stuff that Steve Bough has done if I did not bring a cheat sheet, because he has an amazing record of leadership within the legal profession in my State.

He grew up in a small town called Republic, Missouri, and attended Missouri State University, which is located in Springfield in the southwest corner of our State. That is where he met his wife, Andrea. He attended law school at the University of Missouri, located in Kansas City, and he was editor-in-chief of the Law Review during his time at law school.

After law school, he clerked for a very distinguished judge in our history in the State, Judge Scott Wright. After that, he began practicing law, and he has been a partner in his own law practice for a number of years. Prior to that, he was an associate at a very respected law firm, Shamberg, Johnson and Bergman.

But he has been practicing on his own since 2002, in his own law firm, where he is a partner. So he understands the challenges of small businesses and that fear that you have gnawing in your stomach that everyone gets paid before you do. And, therefore, you must work hard.

He is active in a lot of bar organizations and has served in leadership roles in almost every bar organization in our State. He has been president of the Kansas City Bar Association, Young Lawyers Section. He has been on the Board of Directors of the Kansas City Metropolitan Bar Association, the Board of Governors of the Missouri Bar Association, and currently serves on the Board of Governors of his university, Missouri State.

He serves as an adjunct professor at UMKC Law School teaching Federal Jurisdiction and Trial Advocacy. Additionally, he serves on the Professor Robert Downs Scholarship Committee, an endowed scholarship at UMKC Law School.

Steve has been president of the UMKC Law Alumni Association and is a member of the Board of Trustees for the UMKC Law Foundation.

Now, the best part about Steve Bough are the people he has with him today. He has with him today his wife, Andrea, who is a lawyer in her own right. She is an accomplished attorney who works in a very respected law firm in Kansas City doing real estate development work, municipal bonds, and has specialized in making sure people understand their obligations under our Sunshine law, which is the State equivalent of FOIA.

Then they have two children, and, boy, they look good today, and I have got to mention their names. I mean, Grant is sporting a bow tie, Mr. Chairman, that you should long for. Ashley and Grant are their two children, and they are very active in the community. Both Mr. and Mrs. Bough serve as elders in their church, and I remember my mother when she met Steve Bough at her church. He came up to her, as did his wife, and made sure that she knew that they were there for her at the church. And I remember her telling me not long after she met Steve Bough, "You know, you need to do something for him someday. He is a class act. He is a smart man."

I am really pleased that the White House has nominated him for this important job as district judge. He has been in the courtroom so many times. He understands that litigants need fair and—fair decisions that are made quickly, that all of the pleadings need to be read and appreciated, and the work that lawyers put into cases need to be consumed by judges, not just by people who work for them. And he will never get "robitis." This is somebody who does not have an arrogant bone in his body, and even though his appointment is for his life, he will be humble his entire life as he sits in this important position in our judiciary.

I appreciate very much the opportunity to introduce him to you today. I can confidently recommend his confirmation, and thank you very much for giving me this time.

Senator WHITEHOUSE. Thank you very much, Senator McCaskill. And I know that you have important and pressing business, so feel free to excuse yourself whenever you wish.

After Mr. Bough, the rest of the nominees make this Pennsylvania Day here in the Judiciary Committee, so let us begin with my distinguished colleague, Senator Toomey.

PRESENTATION OF WENDY BEETLESTONE, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; MARK A. KEARNEY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; JOSEPH F. LEESON, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; AND GERALD J. PAPPERT, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, BY HON. PATRICK J. TOOMEY, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator TOOMEY. Thank you very much, Chairman Whitehouse, and Pennsylvania Day is always a good day. So I am delighted to have this opportunity—

Senator WHITEHOUSE. We are partial to Rhode Island Day and Iowa Day, too.

[Laughter.]

Senator TOOMEY. I am sure those are lovely days as well.

Ranking Member Grassley, thank you very much also for all of your cooperation. Thank you for the opportunity to introduce four outstanding Pennsylvanians: Mr. Jerry Pappert, Ms. Wendy Beetlestone, Mr. Mark Kearney, and Mr. Joseph Leeson, all nominated by President Obama on June 16th of this year. And I appreciate the timely scheduling of this hearing and the efforts that you have made, in particular Senator Grassley, and others, to keep

these four together so that we can continue to fill the vacancies that occur in Pennsylvania's three districts.

I also want to thank Senator Casey, who is not here at the moment. I think he will be joining us. But Senator Casey has been a terrific colleague for collaboration in particular with respect to filling these vacancies. Together he and I have now been able to usher 11 Pennsylvanians through this process—10 district court judges, one of whom is now sitting in Reading, Pennsylvania; another in Easton, Pennsylvania. I mention those two because those courthouses had been vacant for many years prior to the confirmation of judges there. We have also placed a judge in Williamsport, also a courthouse that had been vacant for some time.

We have had a judge confirmed to the Third Circuit Court of Appeals, Cheryl Krause, who was confirmed just earlier this month. And we are committed to continuing to work with each other to fill the handful of remaining vacancies that we have.

Senator Casey, I have just been talking about you, and I just appreciate the very cooperative effort that we have had together and the success we have been able to enjoy.

Let me just say a few words briefly about the four candidates we have before us today.

First, Jerry Pappert has a terrific and diverse and very extensive legal experience. He is a partner with Cozen O'Connor. He has worked extensively on commercial litigation. He is a former Attorney General for Pennsylvania. He has successfully argued cases before the U.S. and the Pennsylvania Supreme Courts, won a landmark U.S. Supreme Court decision unanimously, the *Booth v. Churner* decision, that set forth the administration exhaustion requirement for a prisoner seeking to sue in Federal court.

Jerry Pappert has enforced Pennsylvania's consumer protection laws, sued drug companies for price fixing, received a \$19 million settlement. Mr. Pappert's diverse experience and really very keen intellect will serve him very well on the Federal bench.

Wendy Beetlestone is also a very experienced litigator. She also happens to be an expert in education law. She is currently a shareholder at Hangle, Aronchick, Segal and Pudlin. She has litigated a number of very complex, major commercial disputes. She has been the general counsel for the Philadelphia School District, led 19 lawyers serving the school district, and represented the Philadelphia School District in a number of important litigations.

She serves on numerous boards and advisory committees, on the Education Law Association, which is a nonprofit that offers information on current legal issues affecting education, on the Pennsylvania State Boards of Higher Education and Vocational Education. Ms. Beetlestone's litigation experience and the care and commitment she has demonstrated to her community will make her a great addition to the Eastern District Court of Pennsylvania.

Mark Kearney is a very successful attorney. He is a managing shareholder at Elliott, Greenleaf, and Siedzikowski, where he has worked for 24 years practicing principally commercial litigation. He has done a lot of pro bono work, especially helping victims of child abuse. Mr. Kearney has also worked on an issue that is very important to me personally, and that is, helping to protect our children from predators in the first place. He has worked with the Mont-

gomery Child Advocacy Project, representing children in criminal, dependency, and civil matters. Mr. Kearney is an outstanding lawyer and I believe an excellent candidate for the Federal bench.

And then, finally, Joseph Leeson. Jay Leeson is a very respected lawyer in Allentown, Pennsylvania. He is a partner in Leeson and Leeson, has ample trial experience. His practice includes litigation, municipal law, nonprofit, and religious law. His commitment to public service is exemplary. He is currently the solicitor for Northampton County. He has served as the Bethlehem city solicitor. If confirmed, Mr. Leeson will sit in the Allentown courthouse, and I think that is important, Mr. Chairman, because it will be the first time that Allentown has had two Federal judges serving in the Allentown courthouse at the same time. And as the third largest city in Pennsylvania, and as the heart of the third largest region, the Lehigh Valley of Pennsylvania, we need to have a second Federal judge in the Allentown courthouse, and Mr. Leeson has indicated his intention to serve there.

So all of these candidates have the crucial qualities that are necessary to be an outstanding Federal judge. They have the intellect, they have the integrity, they have the commitment to public service, and they have respect for the limited role that the judiciary has in our constitutional system.

So I am delighted that each of them is willing to serve in this capacity. Again, I want to thank the Committee for this timely hearing, and I hope that they are favorably reported. They are all outstanding nominees, and I thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Toomey.

The senior Senator from the great State of Pennsylvania has now arrived, and I recognize Senator Bob Casey.

PRESENTATION OF WENDY BEETLESTONE, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; MARK A. KEARNEY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; JOSEPH F. LEESON, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; AND GERALD J. PAPPERT, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, BY HON. ROBERT P. CASEY, JR., A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator CASEY. Mr. Chairman, thank you very much. I am honored to be before you, Senator Grassley as well. And I want to thank Senator Toomey not only for providing a summary of the experience and the qualifications of each of our nominees, but in a larger sense, even beyond today, for the work that we do together to try to arrive at a consensus in our State when it comes to candidates who come before both of us to seek nomination from the President for the district courts in our State. We have three Federal judicial districts. We get a lot of qualified people that come before us, and to arrive at a consensus is difficult and challenging. But it has been an honor to work with him in that process.

I will not reiterate every part of the biographies and credentials of each of our candidates. I will summarize. But I think when it comes to each of these four, let me say first that I know each of

them individually, have known them all for years, literally, some longer than others but many years in each case.

I think probably what unites all of them is a combination of factors or credentials or qualifications which prepares them well to serve on the United States District Court for the Eastern District of Pennsylvania. One of those would be academic achievements. You know from their educational background, both undergraduate and law schools, you know of that part of their record.

Second, I would say by way of experience, wide and diverse experience in the law, experience in front of all kinds of courts, including Federal courts.

And then, third, in addition to that—I should say in addition to that experience, I would say public service as well in each of their cases.

And then, third, the character and temperament, what we can best anticipate as what would be their judicial temperament as judges. But I think in each case they are people of high integrity.

Let me just do a quick highlight of some of them.

I have known Wendy Beetlestone for about a decade now or more, and Senator Toomey outlined her background, her academic background at the University of Pennsylvania Law School and Liverpool University, as well as her work as a law clerk for Federal Judge Gawthrop in the Eastern District—I am sorry, the Court of Appeals in Pennsylvania, as well as her work on education law and the public service that that entailed for the school district of Philadelphia, her private practice at the Hangle, Aronchick firm. So I know her to be someone who not only possesses the qualifications and the capability to be an effective Federal judge, but also the character as well.

Mark Kearney I have known for more than—probably more than 10 years now, it is more like 20 or 25. Senator Toomey outlined his work at the Elliott, Greenleaf and Siedzikowski firm since 1990, clerking on the Delaware Court of Chancery, one of our most significant courts in the country dealing with matters—a range of matters with corporations and other matters that come before that court. Senator Toomey mentioned his advocacy for children, especially in a volunteer capacity, and his academic background.

Mark is someone who I think understands, just as Wendy does, that when people come before Federal courts, they do not always come with power and influence. Sometimes the only shot they have is to come before that district court and that judge, and I think he will be a very strong Federal judge, as would Wendy.

Jay Leeson I have known probably the longest of our candidates. I have known Jay not since he started in 1980 with his family's law firm, but not long after that, getting to know him in the world of government and politics, as well as our parents knowing each other for literally decades. Public service on the city council of Bethlehem, city solicitor as well. He went to the same law school I went to. That should not—we should recommend him in every instance, but I think it is a very strong law school, Catholic University of America, of course, graduating from DeSales University as well. Jay is someone who takes his job as a lawyer and advocate very seriously. I think he is the kind of person that we want in a Fed-

eral court because of his integrity and because of his broad experience as a lawyer and his commitment to public service.

And then Jerry Pappert, someone that I got to know when I was in State government, he was the first Deputy Attorney General for Attorney General Mike Fisher, who was elected the same year I was elected as Auditor General. We were both statewide elected officials and had to work together and did work together well. I got to know Jerry in those years. Then later, of course, he became the Attorney General of the State after Attorney General Fisher became a Federal court of appeals judge, working as a partner at Cozen O'Connor and prior to that at the Duane Morris law firm. Again, tremendous public and private sector experience, the right kind of temperament and qualifications that we would expect from anyone serving on the United States District Court.

So I think in each of these cases, they are people that do possess the experience and the commitment to public service we would hope for, but also that very critical ingredient, which is integrity and the kind of judicial temperament we would hope every judge possesses.

So with that, and we can certainly supplement the record with more, I want to thank you for this opportunity and recommend all four of these with enthusiasm and gusto. And, again, I want to thank Senator Toomey for his commitment to working through our process.

Senator WHITEHOUSE. Let me thank you both. The process by which United States Senators make recommendations to the President as to who should be the nominee to the United States District Court in their home State is a very important one, and it is one that I think we on the Judiciary Committee should value a lot. Nobody knows their community better than the Senators from that community in the Senate, and these are very public acts to recommend someone. And when that comes, I think our colleagues take that responsibility very seriously. And the importance of not only the recommendation to the White House but the willingness of Senators to depart from their busy schedules to come here and speak for their nominees is something that is significant and appreciated.

But I do know you both have busy schedules to get to, so let me excuse you from this hearing, and we will bring forward the nominees and proceed with our opening statements and get underway.

Thank you very, very much.

[Pause.]

Senator WHITEHOUSE. Does everybody know where to sit? Well, before you sit, let me ask you all to stand and affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BOUGH. I do.

Mr. BONILLA. I do.

Ms. BEETLESTONE. I do.

Mr. KEARNEY. I do.

Mr. LEESON. I do.

Mr. PAPPERT. I do.

Senator WHITEHOUSE. Please be seated, and welcome to the Judiciary Committee. I know this is a proud day for you and for your families, and we appreciate that very much.

We are here to consider six nominations to the Federal bench: Stephen Bough, nominated to the U.S. District Court for the District of Missouri; Armando Bonilla, nominated to the U.S. Court of Federal Claims; Wendy Beetlestone, Mark Kearney, Joseph Ileson, and Gerald Pappert, all nominated to the U.S. District Court for the Eastern District of Pennsylvania.

I welcome each of you and your families and your friends to the U.S. Senate, and for those who are participating electronically, I welcome them as well.

Voting to confirm an individual to the Federal bench is one of the most important and lasting decisions that a Senator can make. Every day Federal judges make decisions that affect the lives of ordinary Americans in all walks of life, often in vital ways for that individual.

In performing that function, judges must respect the role of Congress as the elected representatives of the American people. They must decide cases based on the law and the facts. They must not prejudge any case but listen to every party that comes before them with an open mind. They must respect precedent, and they must limit themselves to the issues that the court must decide in the matter before them. I hope that each judicial nominee that we hear from today understands the importance of those baseline principles.

Judicial nominees also must have the requisite legal skill to serve as a Federal judge. Each of today's nominees has an impressive record of achievement. As a result, I believe that each nomination deserves prompt and favorable consideration. We need good judges for our system of justice to function.

I also think it is important that our judges respect the function of the jury. The jury is an important element in our constitutional system of Government. Blackstone himself wrote that, "The most powerful individual in the state will be cautious of committing any flagrant invasion of another's right when he knows that the fact of his oppression must be examined and decided by 12 indifferent men." Now, of course, to him, "indifferent" meant something a little different than what we now mean. It meant "impartial." And "men" is now "men and women," thankfully. But the principle behind Blackstone's comment I think is true. The jury is an important element in our structure of Government that can hold to actual individuals and institutions that may not be able to be held to account in any other form of Government, which is why de Tocqueville in "Democracy in America" wrote that the jury is, before everything, a political institution, one ought to consider it as a mode of the sovereignty of the people. Each of you will have the chance to manage juries, I hope, and I hope that you treat them with respect and allow them to have the role that they deserve.

Before I turn to our Ranking Member Senator Grassley, let me do two brief orders of business.

One, I would like to welcome and introduce Armando Bonilla. As an appointee to the Federal Court of Claims, he does not have a home State Senator to make his introduction. He is nominated to

the U.S. Court of Federal Claims for a 15-year term. He spent his entire legal career serving in the Department of Justice. Since March 2014, he served as an Associate Deputy Attorney General in the U.S. Department of Justice's Office of the Deputy Attorney General, and for those of us who have served in the Department of Justice, we know that that office is an extraordinarily busy one where virtually every difficult issue the Department faces comes.

He before that served as senior counsel and previously as a trial attorney in the Civil and Criminal Divisions of the Department. He has also taught as an adjunct professor at the George Washington University School of Law. Although born in New York, Mr. Bonilla received his B.A. from West Virginia University and his J.D. magna cum laude from Seton Hall University. After graduating law school, he clerked himself for U.S. District Court Judge Garrett E. Brown from the District of Delaware.

So now everyone stands introduced, and I would like to ask unanimous consent to put into the record a letter that I received from Gerald Coyne in support of Mr. Pappert, who is here. When I was the Attorney General in Rhode Island, I hired Jerry to be my Deputy Attorney General. He did a good enough job that every successive Attorney General after me has kept him on as the Deputy Attorney General. He is one of these quiet guys who just makes sure that everything runs calmly, on time, efficiently, and that the right answer is achieved. And so I take his recommendation very seriously, and I am very pleased that he wrote this letter, and without objection, it will be made a part of the record. Congratulations, Mr. Pappert, on a wonderful letter from somebody who in Rhode Island we value very highly.

[The letter appears as a submission for the record.]

Senator WHITEHOUSE. I will turn now to my distinguished Ranking Member.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. Mr. Chairman, even though Mr. Bonilla did not have anybody to introduce him, you did a good job of that. Tim Kelly of my staff spoke very highly of him last night and made a 12-hour advanced introduction of him.

First of all, to all of you, you are to be congratulated on this advancement of your political career, a very important milestone for you but also for your families and friends, and so we welcome you and congratulate you.

Although we have these nomination hearings regularly—this is our 11th hearing this year—each one of them is a very serious and important event, much as the Chairman has just pointed out.

All but one of you have been nominated to lifetime positions. When I consider each candidate, I look at their legal background and qualifications. I look at how long they have practiced law and what kind of experience they have. And I also consider what we refer to as temperament, demeanor, and commitment to integrity.

I believe that temperament is just as important as legal qualifications. Our Federal judges need to be able to thoughtfully, calmly, and impartially consider each case before them. They need to treat all litigants that come before them with respect and dignity.

Many of the candidates who come before us today have been politically active, and I have no problem with that. And I have voted for nominees whose political preferences are far different from mine. But I do believe that we can learn a lot about someone's potential judicial demeanor based on how they have treated those who disagree with them politically. Have they been fair and respectful in their political discourse?

I understand political passion. And as the old saying goes, "Politics ain't beanbag." But the power of our judiciary rests entirely on the people's confidence in impartiality. And we can debate how far is too far in politics, but we can all agree that what may be in bounds in the political arena may not be appropriate for the Federal judiciary.

If litigants doubt a judge's ability to be impartial and treat those in front of him or her with respect, then confidence in our judicial system will erode quickly if they cannot count on that. And, of course, that concerns me.

During today's hearing I look forward to engaging in a discussion with each of you. I doubt if I will have time to ask each of you the length and breadth of questions I would like to, so you will probably get some questions to respond in writing. I appreciate your responses to those.

While the President's job to nominate, it is the Senate's job to consider whether to confirm each of you to the position you have been nominated for. Congratulations once again, and I yield.

Senator WHITEHOUSE. Thank you very much, Senator Grassley.

Let me give each of the nominees a chance to make an opening statement here, and we would welcome your introduction of family members and friends who are with you. So let us proceed right across the table. Let me see. It is not quite alphabetical, but anyway, we will go from left to right, starting with Mr. Bough. Please proceed.

**STATEMENT OF STEPHEN R. BOUGH, NOMINEE TO BE
DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI**

Mr. BOUGH. Thank you, Senator. I would like to thank the President for nominating me and Chairman Leahy and Chairman Whitehouse and Ranking Member Grassley. I would like to thank both Senator McCaskill and Senator Blunt for giving me the opportunity to be here today.

I would also like to introduce my family again: my daughter, Ashley, who just turned 16; my wife, Andrea Bough, who is an attorney in Kansas City at Lewis, Rice and Fingersh; and my son, Grant Bough, who will be turning 11 next month.

Senator WHITEHOUSE. He would be the one in the bow tie?

Mr. BOUGH. He would be the good-looking young man in the bow tie.

Senator WHITEHOUSE. Very good.

Mr. BOUGH. Thank you, Senator.

[The biographical information of Mr. Bough appears as a submission for the record.]

Senator WHITEHOUSE. Mr. Bonilla, please proceed.

**STATEMENT OF ARMANDO OMAR BONILLA, NOMINEE
TO BE JUDGE OF THE COURT OF FEDERAL CLAIMS**

Mr. BONILLA. Thank you, Chairman Whitehouse, for that kind introduction, and Ranking Member Grassley and Members of the Senate Judiciary Committee for scheduling this hearing to consider our nominations.

I would also like to thank President Obama for bestowing upon me the highest honor of my professional career in nominating me to serve on the court where I learned to be a trial lawyer 20 years ago.

Here with me today are my wife of 10 years, Dr. Jacqueline Wright Bonilla, who served as an administrative patent judge; our daughter, Brycen, who is 9; and our son, Armando, who goes by "AJ," who is 6; my mother, Aleida Bonilla; and a dear friend of the family for over 40 years, Harold Paul.

Seated with my family are my closest friends and the godparents to my children, Amy Brown and Karen Fisher, who has the honor of serving for Senator Wyden; and two people who started with me 20 years ago at the Department of Justice: Federal Circuit Judge Todd Hughes and Laura Loomis Ramone.

Sadly, my father passed away shortly after I joined the Department of Justice and can only be here in spirit. He was a man who worked two and three jobs to make sure that my life's ambitions and dreams would not be limited. And he and my mother raised me to truly believe that a person who grows up cleaning law firm offices at night with his parents can someday be nominated by the President and considered by the Senate for a seat on the Federal bench. He truly would have loved this day.

I would like to welcome via the Webcast my sister, Barbara, and her partner, Bob Feldman, who I believe are sitting on a beach somewhere watching this on their iPad; and a dear friend of mine for over 20 years, Colleen Conrey; and from the west coast, my mother-in-law, Joy Adams; my father-in-law, Paul Wright, and his partner, Lenora; and my brothers-in-law Mike, Mark, and Alex Wright, and his wife, Nicole, who welcomed their first child into this world earlier this week.

And, finally, I would like to thank my Justice Department colleagues, past and present, some of whom are here today, for their service to this Nation and for making the Department of Justice an amazing place to work and to learn and for sharing with me their talents.

I thank you again for considering my nomination.

[The biographical information of Mr. Bonilla appears as a submission for the record.]

Senator WHITEHOUSE. Thanks, Mr. Bonilla.

Ms. Beetlestone, welcome.

**STATEMENT OF WENDY BEETLESTONE, NOMINEE TO BE
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Ms. BEETLESTONE. Thank you, Senator. I would like to take this opportunity to thank President Obama for honoring me with this nomination. I would also like to thank Senators Casey and Toomey for their kind words and their support through this process.

Senator Whitehouse and Ranking Member Senator Grassley, thank you so much for the hard work that you do on this Committee.

I have a fair number of family members today in the audience: my husband, John, John Detre; our daughter Claudia Detre, who is going into the University of Pennsylvania engineering program in just a few weeks; and daughter Naomi Detre who is 16 and just about to go into the process of deciding which college she is going to go to; my mother, Clare, my sister, Linda, and her husband, Andy Bowen; as well as my niece, their daughter, Eleanor "Nell" Bowen; my brother, Philip, who flew all the way from Botswana; and I am particularly appreciative that the hearing actually occurred when he was here in the country; and our dear friends, Chris Simpson and Joanna Crawford.

Thank you so much.

[The biographical information of Ms. Beetlestone appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much, Ms. Beetlestone.
Mr. Kearney.

STATEMENT OF MARK A. KEARNEY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Mr. KEARNEY. Good morning, Senator.

Senator WHITEHOUSE. Good morning.

Mr. KEARNEY. Thank you, Mr. Chairman, thank you, Mr. Ranking Member, for the opportunity to address you.

I want to thank Senator Bob Casey and Senator Pat Toomey. We sit here in this spot realizing how fortunate we are in Pennsylvania to have two distinguished servants who really benefit all Americans by the process that they engage in for this service.

I want to thank President Obama. The honor that he has given my family is humbling and will be forever—we will be forever grateful for his confidence.

I also have a series of family members who commuted from Pennsylvania and elsewhere to be here, and I would like to take a moment to recognize them.

I would like to start, of course, where I always start, with my wife, Eileen. Eileen is the bedrock of everything we see, and I thank her for being here and being here every day.

I would like to introduce my son, Seamus. Seamus is going into 9th grade at Ian Academy; my daughter, Mary, is going into 7th grade at Norwood-Fontbonne. Both schools are in Montgomery County, Pennsylvania, where we are from.

I would like to introduce my sister, Karen Finnegan. Karen is here with her husband, Michael Finnegan; my godson, Michael Finnegan; and my niece, Kate Finnegan.

My father passed a few years ago, and he would have greatly enjoyed this. The person who most looks like him in the world is here, and that is his sister, my aunt Marie, known as Peony Scullin, who is here at every one of these events my entire life, and she is here today with her daughter, my cousin, Teresa Scullin.

My mom passed in 2012. The woman who looks most like my mom is here, and that is Mrs. Agatha Kane, known as Aunt Aggie.

And I am so grateful that she is here. She is here with her daughters, my cousins, Eileen and Denise.

I am also blessed that two friends drove down from Philadelphia this morning, two very busy lawyers and businesspeople.

First is my best man and dearest friend, Tom Egan. Tom Egan's name resonates in the Eastern District of Pennsylvania. His grandfather was a distinguished jurist on the Eastern District of Pennsylvania. Tom is a very distinguished trial lawyer in the Eastern District of Pennsylvania, and I am honored that he is here. He is also the godfather of my daughter, Mary.

I am also blessed that my friend, Ken Tepper is here. Ken also worked with me at the Elliott, Greenleaf firm and is a long-time friend and confidante. I am honored he would take time to come see me.

I also have to thank those people who could not be here but are, I am sure, watching on Webcasts, and I started, of course, with Eileen's family: her mom, Eve Brennan, who I am sure is watching. I also thank the very talented and extraordinary trial lawyers at my law firm, Elliott, Greenleaf, for all they have done for me and for all they have taught me.

I want to thank my friends in the Delaware bar. I was hoping to say hello to Senator Coons. As you may know, I started in the Delaware bar and clerked in the Court of Chancery, and I have a great affection for the practice of law in the Chancery Court.

And I would like to thank my friends at the Montgomery County bar and bench who have been so instructive to me, both in collegiality and excellence, and in demeanor, and I thank them.

And, last, I have had the opportunity, Mr. Chairman, to serve as a baseball coach for many years. It is a great opportunity to train and teach. And I want to thank the many people who are watching on webcast, and, in fact, a family that drove down here who I had the opportunity to coach.

So thank you very much. I look forward to answering your and the Ranking Member's questions.

[The biographical information of Mr. Kearney appears as a submission for the record.]

Senator WHITEHOUSE. You are most welcome.

And we will turn now to Mr. Leeson.

STATEMENT OF JOSEPH F. LEESON, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Mr. LEESON. Senator Whitehouse, I would like to thank you and Senator Grassley for convening this hearing to evaluate and consider my nomination as well as that of my fellow nominees here today.

I would like to thank the President for making this nomination. I would like to thank Senators Casey and Toomey for their recommendation of me to the President and for their kind and supportive words this morning.

I would like to acknowledge and thank the presence of my wife, Loretta Leeson, who is here today; my son Joseph Leeson III, who is also with us today; my daughter Patricia Leeson, who is here with us today; my son Robert Leeson, who is here with us today;

and my other two children, Maureen Leeson and Kathleen Leeson. Maureen is in Seattle, Washington, working, and my daughter Kathleen is in Pennsylvania working today, and I know they will be watching either contemporaneously by Webcast or later today watch the Webcast of this. And I thank them for their love and support. They are the joy of my life, my wife and my children. And I thank you again for convening this hearing.

[The biographical information of Mr. Leeson appears as a submission for the record.]

Senator WHITEHOUSE. Thanks, Mr. Leeson.

And the final member of the panel, Gerald Pappert. Let me also offer, without objection, into the record of this hearing a letter that Chairman Leahy has provided me from my former colleague, the Attorney General of Vermont, Bill Sorrell. And without objection, that will be added to the record also in support of Mr. Pappert.

[The letter appears as a submission for the record.]

Senator WHITEHOUSE. Please proceed.

**STATEMENT OF GERALD J. PAPPERT, NOMINEE TO BE
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Mr. PAPPERT. Senator Whitehouse, thank you very much for those kinds words and for passing along the support of General Sorrell and Chief Deputy Coyne.

Thank you to all of the Members of the Committee. Senator Grassley, thank you very much for everything you did along with the other Members of the Committee to enable me to be before the Committee for your consideration today. I am deeply grateful to you.

I want to thank, of course, Senators Toomey and Casey for their confidence and trust in me and their recommendation to the President, and thank the President for the honor of nominating me to this very important position.

Of course, all thanks start with, for all of us, our spouses and our children. I want to thank my wife, Ellen, and daughter, Mary, for their love and support. Mary will be beginning high school this year. They are watching us on the Webcast.

And I want to thank some family and friends who are here with me today, specifically my niece, Kate Dugan, who joined us today, and particularly my friend and mentor and former boss, Judge Mike Fisher, former Attorney General Fisher, and his wife, Carol.

Of course, I was Mike's first deputy in the office, which is where I got to know Jerry Coyne so well, and if I have the honor and privilege of being confirmed to this position by the Senate, Mike, who now sits on the Third Circuit, will once again be reviewing my work. So I hope he looks forward to that as much as I do. But I am grateful to Mike and Carol and to Kate for being here.

I am honored to be before you today, Senator, and I look forward to answering any questions that you or any other Members of the Committee may have.

Thank you.

[The biographical information of Mr. Pappert appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much, Mr. Pappert. Thank you for mentioning that Judge Fisher is here. I see him now, but I did not see him earlier. We served as Attorneys General together along with Attorney General Sorrell from Vermont, and it is terrific that he has taken the trouble. General, Your Honor, welcome. Thank you for joining us.

You were here for my opening statement. I made a list of what I think are the baseline rules for district judges to follow. To repeat, they are that judges should respect the role of Congress as the elected representatives of the American people; that they should decide cases based on the law and the facts; that they should not prejudge any case but listen fairly and with an open mind to everyone that comes before them; that they should respect the precedent that has been laid down; and that they should limit themselves to the issues that are before them that the court must decide. I think those are, as I said, baseline considerations, but baseline considerations are always worth reiteration, and I just want to hear from each of you that you support those rules and will abide by them as United States district judge, if confirmed.

Mr. BOUGH. Senator Whitehouse, I have heard those rules, and I will fully abide by them.

Senator WHITEHOUSE. Mr. Bonilla.

Mr. BONILLA. Yes, Senator, I agree.

Senator WHITEHOUSE. Ms. Beetlestone.

Ms. BEETLESTONE. I agree also.

Mr. KEARNEY. I agree.

Mr. LEESON. I agree, fully committed.

Mr. PAPPERT. Yes, Senator, I agree as well. Thank you.

Senator WHITEHOUSE. Thank you. I know that is pretty straightforward stuff, but, still, it is good to make that record.

The other concern that I bring to this hearing is that, in the way that I look at our history and in the way that I look at our system of justice, the jury plays a very important role. It is one of the few places where ordinary men and women have the opportunity to participate in an office of government, which the jury is, and to make firsthand and in the community decisions that can be vital to that community and are very often absolutely vital to the party that is before them.

I would also note that the jury is an institution that is very hard to play politics with. Tampering with the views of the executive branch and the legislative branch is a constant pastime, and we license it through lobbying and campaign finance activities. Tampering with a jury is a crime, and that means that the jury can be the last place where someone who is unpopular or someone who has powerful adversaries can get a fair shake. And what I look out and see is an institution of government that is dying and shriveling, that is increasingly hard to get before, that is increasingly rare, and my concern is that too many judges now see the jury as sort of a fact-finding appendage to the court that if you can get cases by them without going to them, then it will save them the trouble of having to sit on cases, and it will allow the court to move its calendar, and that is kind of the end of the lesson.

I think that there is harm done by that view of the world to the very structure of our Government, and that the more we can take

as democratic and powerful an institution as the jury into our lives, the better off we are.

So, in any event, some of you had lots of experience with juries. I would like to hear a word from each of you about the jury and its role in our system of Government and how you would see operating with juries in your courtroom if you are confirmed. We will start again—let us go the other way this time, just to shake it up. Mr. Pappert, you lead off.

Mr. PAPPERT. Thank you, Senator, very much. The jury system, of course, is the bedrock of our judicial system and our constitutional structure here in the country, and I think that it is crucial to respect at all points along the timeline in a litigation matter the role of the jury and to allow the jury to serve its function.

Finally, I think it is important for a trial court judge to recognize the sacrifice that the individual jurors make to sit on juries and to provide the essence of the system for us and to treat them respectfully and accordingly.

Thank you.

Mr. LEESON. Senator, I have spent much of my professional life trying cases in front of juries. They are a fundamental part of the bedrock of our democracy. No less a personage than Thomas Jefferson himself once said that the jury system is the great equalizer between the powerful and the powerless. And I have observed that in my own work that people can come into court, get a fair shake from 12 citizens, their peers, hear their case and decide it fairly.

I am fully committed to the jury system. I want to see it strong, and I believe fully in it 100 percent.

Senator WHITEHOUSE. Thank you very much.

Mr. Kearney.

Mr. KEARNEY. Thank you, Senator, for the question. As a commercial trial lawyer, I recognize, maybe uniquely, the role the jury has in those type of disputes. Oftentimes, as Mr. Chairman mentioned, courts will look beyond that because they may be business disputes and they can be decided on paper.

My experience has always been that the jury is the great equalizer, to borrow my colleague's quote. It is absolutely what works in the system.

Like Mr. Pappert, I would absolutely agree that the members of the jury, having served on a jury, the members of the jury deserve all the respect that should be accorded to them under the principles that have been, I think, since the 12th century. And I strongly believe that the lawyers who come—if I am honored enough to join that court, the lawyers that come before the judges should recognize at the end of the day this is a jury trial in most contexts.

Senator WHITEHOUSE. Thank you very much.

Ms. Beetlestone.

Ms. BEETLESTONE. Thank you for that question, Senator. If I am confirmed, I certainly would respect the jury. I have always respected and been honored in being called to jury selection, and if I were to have the honor of running a courtroom, I would honor the people who give their time and effort to serve on juries.

My view is that in being a judge, one should respect procedure, one should respect substantive law, and also respect the parties,

and the parties—by the “parties,” I mean litigants, attorneys, and particularly the jury.

Thank you.

Senator WHITEHOUSE. Thank you, Ms. Beetlestone.

Mr. Bonilla.

Mr. BONILLA. Thank you, Senator. I agree with all the statements of my colleagues. Having tried a number of cases before juries and having observed a number of jury trials during my clerkship and having actually sat on a jury that went to verdict, I am in awe of how serious all the jurors take their responsibilities.

Unfortunately, the Court of Federal Claims does not have jury trials. We only have bench trials, so I will not be given the privilege and the honor of working with jurors.

Senator WHITEHOUSE. You are exempt.

[Laughter.]

Senator WHITEHOUSE. Mr. Bough.

Mr. BOUGH. As a trial lawyer who has resolved many cases in front of a jury, I am a strong believer in the Seventh Amendment right to trial by jury. It is often said that the two most important boxes in the world are the ballot box and the jury box, and I strongly believe that.

In my role as an attorney in Kansas City, I serve on an organization called the Missouri Institute for Justice, which has plaintiffs’ lawyers and defense lawyers; the Chamber of Commerce is a member, and we collectively work in Jefferson City with Democrats and Republicans to ensure that our jury system is not tampered with and to ensure that our judges are nonpartisan in their actions. That is one of the proudest things I do.

Senator WHITEHOUSE. Thank you very much.

I am now honored to turn to our Ranking Member, Senator Grassley.

Senator GRASSLEY. I hope none of you will be disappointed if I do not ask all of your questions. I think I am only going to take time for a couple questions of a couple people and then submit the rest of my questions for answer in writing.

I am going to start with Mr. Bough. You have a reputation for writing quite a few blogs as a political leader. You wrote on a lot of political topics, but you also wrote about other issues such as what makes a good judge and what does not. And one time you maybe said something you might regret: “Who reads this blog will agree I should not be a judge.”

[Laughter.]

Senator GRASSLEY. So there are some who—now, I am not going to ask you questions about your blog. I am going to ask you questions about another matter. But I just wanted to make you aware that some question whether you possess the temperament we typically look for in a candidate for a Federal judge. I just wanted you to know in fairness that we will be taking a close look at your writings in the blog, and I imagine some of my colleagues will as well.

Today, though, in the limited time, I would like to ask about some complaints you filed with the Federal Election Commission. According to the FEC records, you filed two complaints—one in 2008, one in 2012. The FEC dismissed both complaints. They dis-

missed the 2008 complaint with a brief summary opinion, and in 2012, you appeared to redouble your efforts. You filed a 93-page complaint against the same candidate. The FEC responded to the filing by dismissing all your complaints. Their dismissal provided a meticulous response to each of your claims and found that your complaints had “no basis for its allegations.” The ruling criticized your allegations as “lacking adequate specificity,” for being “vague and speculative and unsupported.”

The bottom line is this: These complaints strike me as frivolous, and what troubles me about them is you appear to be utilizing this Government entity for purposes of harassing political opponents. So I would like to ask if you would identify, either now or you could do it later in writing, what evidence you had to support the following accusations that were not included in your complaint.

In your 2012 complaint, you accused the candidate’s campaign of, among other things, “continuing failing to report expenditures” related to billboard advertising. The Commission noted that your complaint provided “no basis for its allegations,” found that the allegations were “vague and speculative,” and concluded that there was “no reason to believe the campaign failed to report expenditures.”

Other than the de minimis material included in the appendix to the complaint, upon what evidence then did you base this allegation? That is one question. And then I will ask another question, and that will be it.

Mr. BOUGH. Senator, thank you for that question. I did make those FEC filings relating to congressional races in the Kansas City area while I served as the Democratic Chairman. I believe that the FEC found that there were violations, but found that they were de minimis violations. However, I am a strong believer, as I think would serve me well if I have the honor to serve as a judge, that all the rules are to be followed, and that the system should work out those differences.

The 2012 filing was 93 pages with attachments. I believe that there was specificity, which had to come through 93 pages and all the attachments.

In particular, as to the billboard, the billboard was paid for, I believe, for 1 month and it was up for the entirety of the campaign season, and I will be more than glad to provide that additional information to you after this hearing.

Senator GRASSLEY. You also accused the candidate’s campaign of illegally coordinating communication with a political action committee, Missouri Right to Life. The Commission noted that there was “no substantial similarity” between the two ads compared in your complaint and found that there was “no reason to believe”—that is a quote—the campaign illegally coordinated communications other than the photograph of a Missouri Right to Life ad and the printout of the candidate’s campaign website you included with your complaint. Upon what evidence did you base the allegation?

Mr. BOUGH. Thank you, Senator. What we did provide the FEC, which shows a great level of specificity, that on the Right to Life web page that it mirrored the information on the candidate’s web page, different word-for-word, verbatim coordination, and that will be information I will provide to you after this hearing.

Senator GRASSLEY. Okay.

[The information referred to appears as a submission for the record.]

Senator GRASSLEY. Mr. Leeson, in June 2012, you participated in a religious freedom forum. The forum discussed the Health and Human Services mandate which is part of the Affordable Care Act. You made the comment that the HHS mandate is “un-American, unprecedented, and blatantly unconstitutional” and that it violated the First Amendment, the Administrative Procedures Act, and the Religious Freedom Restoration Act. Presumably, you were speaking about the mandate included in the Affordable Care Act that required some employers to provide abortion-inducing drugs.

A, could you provide a context for that comment? What exact elements of the Affordable Care Act were you discussing? First question. And then I will follow it up.

Mr. LEESON. The context is I was asked by one of my clients, the Catholic Diocese of Allentown, to represent it at this forum on the subject of the First Amendment and religious liberty. That was the context in which I was representing the client and made those remarks.

Senator GRASSLEY. And is that the exact element of the Affordable Care Act that you were discussing?

Mr. LEESON. By sheer coincidence, my remarks were made 24 hours, unknowingly, before the U.S. Supreme Court handed down its ruling declaring the Affordable Care Act constitutional. So at the time that I was discussing it, I was discussing the Act overall. There was a specific discussion on the mandate as well. And in retrospect, the use of the term “un-American” I think was not an appropriate choice of words on my part.

Senator GRASSLEY. Okay. And the last question, do you have any views that would make you unable to discharge your duties faithfully as a U.S. district judge?

Mr. LEESON. No, Senator Grassley, there is nothing in my personal beliefs or my faith that would prevent me from applying and upholding all precedents, without exception, of the U.S. Supreme Court and the Third Circuit Court of Appeals. No exceptions.

Senator GRASSLEY. Thank you. And for the other four of you, I will have questions to submit in writing, and maybe for the other two some followup questions.

[The questions of Ranking Member Grassley appear as submissions for the record.]

Senator GRASSLEY. Thank you very much.

Mr. BOUGH. Thank you, Senator.

Mr. BONILLA. Thank you, Senator.

Ms. BEETLESTONE. Thank you, Senator.

Mr. KEARNEY. Thank you, Senator.

Mr. KEARNEY. Thank you, Senator.

Mr. PAPPERT. Thank you, Senator.

Senator WHITEHOUSE. Very well. Thank you very much for the time you have spent with us this morning. Congratulations on your nominations. We wish you well in the process going forward. As you know, it is cumbersome, unwieldy, uncertain, among its other advantages. But very often it ends in a happy result, and 1 day you will be, with any luck, sitting behind the bench and this will only

be a dim and distant memory, all that you have been through to get here.

But I really do appreciate that each of you has demonstrated sufficient leadership in your communities and sufficient legal skill and sufficient character that your home State Senators and the President of the United States have recommended and selected you for these different positions. They are positions of great honor and trust, and we hope that as you go forward you will not only meet with success through the confirmation process, but that you will equip the duties that you will then assume with the distinction that they deserve.

The hearing record will remain open for further materials for one additional week——

Senator GRASSLEY. We probably need to add that other Members will have questions in writing as well.

Senator WHITEHOUSE. Yes, and obviously your nomination will not go forward until those questions have been responded to. So I would advise dispatch in doing that.

So best wishes to you all, and that will conclude the hearing.

[Whereupon, at 11:14 a.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Judicial Nominations”

Thursday, July 24, 2014
Dirksen Senate Office Building, Room 226
10:15 a.m.

Stephen R. Bough, to be a United States District Judge for the Western District of Missouri

Armando Omar Bonilla, to be a Judge of the United States Court of Federal Claims

Wendy Beetlestone, to be a United States District Judge for the Eastern District of Pennsylvania

Mark A. Kearney, to be a United States District Judge for the Eastern District of Pennsylvania

Joseph F. Leeson, Jr., to be a United States District Judge for the Eastern District of
Pennsylvania

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Stephen Rogers Bough

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Western District of Missouri

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

The Law Offices of Stephen R. Bough
917 West 43rd Street, Suite 100
Kansas City, MO 64111

4. **Birthplace:** State year and place of birth.

1970; Gainesville, Florida

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1994 – 1997, University of Missouri – Kansas City School of Law; J.D., 1997
1990 – 1993, Missouri State University; B.S., 1993
1989, Drury University; no degree

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2006 – present
The Law Offices of Stephen R. Bough
917 West 43rd Street
Kansas City, MO 64111
Attorney

2003 – 2009

UMKC School of Law
5100 Rockhill Road
Kansas City, MO 64110
Adjunct Professor

2002 – 2006

Henning & Bough
1044 Main Street, Suite 500
Kansas City, MO 64105
Attorney

1999 – 2002, Summer 1996

Shamberg, Johnson & Bergman
2600 Grand Boulevard, Suite 550
Kansas City, MO 64108
Associate Attorney (1999 – 2002)
Summer Associate (Summer 1996)

1999 – 2001

City of Roeland Park
4600 West 51st Street
Roeland Park, KS 66205
Judge Pro Tem

1997 – 1999

Judge Scott O. Wright
400 East Ninth Street, Room 8662
Kansas City, MO 64106
Law Clerk

Summer 1995

City of Overland Park – Law Department
8500 Santa Fe Drive
Overland Park, KS 66212
Summer Law Clerk

1993 – 1994

Roadway Express, Inc.
5575 East State Highway 00
Strafford, MO 65757
Manager

Other Affiliations (uncompensated):

2000 – present

UMKC Law Foundation

500 East 52nd Street

Kansas City, MO 64110

Board of Trustees

2011 – present

Missouri State University

901 South National Avenue

Springfield, MO 65897

Board of Governors

2001 – present

Missouri Association of Trial Attorneys

240 East High Street

Jefferson City, MO 65101

Board of Governors

2002 – present

Committee for County Progress

P.O. Box 10462

Kansas City, MO 64171

President (2006 – 2008)

Board of Governors (2002 – present)

2005 – present

Lawyers Encouraging Academic Performance

4200 Little Blue Parkway, Suite 630

Independence, MO 64057

Board of Directors

2008 – present

Saint Paul's Episcopal Day School

4041 Main Street

Kansas City, MO 64111

Trustee

2008 – present

Missouri Institute for Justice

Board of Directors

(no physical address)

2008 – 2011

Missouri Bar Association

326 Monroe
Jefferson City, MO 65102
Board of Governors

2008 – 2009
Jackson County Democratic Committee
308 West Maple
Independence, MO 64050
Chairman

2007 – 2008
Kansas City Metropolitan Bar Association
2300 Main Street #100
Kansas City, MO 64108
Board of Directors

2001 – 2002, 2005 – 2007
Country Club Christian Church
6101 Ward Parkway
Kansas City, MO 64113
Executive Committee Member

2000 – 2006
Kansas City Metropolitan Bar Foundation
2300 Main Street #100
Kansas City, MO 64108
Board of Directors

2002 – 2003
American Association for Justice (formerly Association of Trial Lawyers of America)
777 Sixth Street, NW, Suite 200
Washington, DC 20001
New Lawyer Division Board of Governors

2004
UMKC Law Alumni Association
500 East 52nd Street
Kansas City, MO 64110
President

2010 – 2012
KCU4EA (Kansas Citizens United for Educational Achievement)
3239 Wabash
Kansas City, MO 64109
Treasurer

2002 – 2005
Missouri Democratic Party, Tenth Senatorial District
308 West Maple
Independence, MO 64050
Treasurer

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

1989 – 1995
Missouri Army National Guard
Sergeant (E-5)
Serial Number was the same as my Social Security Number
Honorable Discharge

I registered for the selective service upon turning 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Super Lawyers, Missouri and Kansas (2005 – present)

Kansas City Business Journal, Best of the Bar (2004 – present)

Jackson County Democratic Committee, Harry S. Truman Democratic Achievement Award (2013)

Missouri Lawyers Weekly, Most Reported Plaintiff Lawyer Wins (2013)

Missouri Lawyers Weekly, Most Reported Plaintiff Lawyer Wins (2012)

Missouri House Resolution recognizing the “Winningest” Plaintiff Attorney Award (2011)

Missouri Lawyers Weekly, “Winningest” Plaintiff Lawyer (2011)

Greater Kansas City Women’s Political Caucus, Mel Carnahan Good Guy Award (2010)

UMKC Law Foundation, Decade Award (2006)

Missouri House Resolution recognizing the Lon O. Hocker Award (2005)

The Missouri Bar Foundation, Lon O. Hocker Award (2005)

Missouri Lawyers Weekly, Up and Coming Lawyers (2004)

The Daily Record, KC Legal Leaders of the Year (2004)

American Association for Justice (formerly Association of Trial Lawyers of America),
New Lawyer's Division Making it Happen Award (2003)

Multiple Sclerosis Society, Corporate Achiever (2003)

Missouri House Resolution recognizing the 40 Under 40 "Young Leaders Unite" Award
(2002)

Ingram's Magazine, 40 Under 40 "Young Leaders Unite" (2002)

Cystic Fibrosis Foundation, Kansas City's Finest Young Professionals (1998)

Kansas City Metropolitan Bar Association, Young Lawyers Section President's Award
(1996, 1998)

UMKC School of Law, Order of the Barristers (1997)

UMKC School of Law, Law Review, Editor in Chief (1996 – 1997)

UMKC School of Law, Max Foust Scholarship Recipient (1995 – 1997)

UMKC School of Law, Dean's Academic Award in Constitutional Law I (1996)

UMKC School of Law, Dean's Academic Award in Torts I (1995)

UMKC School of Law, Dean's Honor List (1994 – 1997)

Missouri Army National Guard, Primary Leadership Development Course, Outstanding
Graduate (1993)

Missouri State University, Phi Sigma Alpha – Political Science Honor Society (1993)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees,
selection panels or conferences of which you are or have been a member, and give the
titles and dates of any offices which you have held in such groups.

American Association for Justice (formerly Association of Trial Lawyers of America)
New Lawyer Division Web Site/Document Library/ATLA Exchange Committee
(2004 – 2005)
Mid-West Coordinator of Law Student Trial Competition (2002)
New Lawyer Division Board of Governors (2002 – 2003)

New Lawyer Division Fundraising Committee (2002 – 2003)
New Lawyer Division Membership Committee (2000)

American Bar Association, Kansas City Metropolitan Bar Association Representative to
Young Lawyers Division

Association for Women Lawyers

Jackson County Bar Association

KC LEGAL

Kansas City Metropolitan Bar Association
Young Lawyers Section President (2003)

Kansas City Metropolitan Bar Association
Board of Directors (2007 – 2008)
Membership Co-Chair (2007 – 2008)
Solo and Small Firm Practice Committee Chair (2006)

Kansas City Metropolitan Bar Foundation
Board of Directors (2000 – 2006)

Missouri Association of Trial Attorneys
Board of Governors (2001 – present)
New Lawyer Committee Chair (2002 – 2004)

Missouri Bar Association
Board of Governors (2008 – 2011)

Missouri Bar Foundation
Fellow (2011 – present)

Missouri Institute for Justice
Board of Directors (2008 – present)

Lawyers Encouraging Academic Performance
Board of Directors (2005 – present)

Legal Aid of Western Missouri
Volunteer Attorney Project Advisory Council, Chairman (2012 – present)

UMKC Law Alumni Association
President (2004)

UMKC Law Foundation
 Board of Trustees (2000 – present)
 Professor Robert C. Downs Scholarship Committee Chair (1997 – present)
 Development and Capital Committee (2011 – 2012)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Missouri, 1997
 Kansas, 1998

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Eighth Circuit Court (2013)
 United States District Court for the District of Kansas (1998)
 United States District Court for the Western District of Missouri (1997)

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Committee for County Progress (2000 – present)
 President (2006 – 2008)
 Board of Governors/Executive Committee (2002 – present)

Country Club Christian Church (1998 – present)
 Elder (2005 – present)
 Executive Committee Member (2001 – 2002, 2005 – 2007)

Federal Bureau of Investigation, Citizen's Academy Graduate (2003 – present)

Jackson County Democratic Committee (2004 – 2012)
Chairman

Jackson County Sports Authority (2012 – 2013)
Acting Member

Justice Institute of Missouri PAC (2008 – present)
Trustee

KCU4EA (Kansas Citizens United for Educational Achievement) (2010 – 2012)
Treasurer (2010 – 2012)

Mid-America Gay and Lesbian Chamber of Commerce (2012 – present)

Missouri Democratic Party, Tenth Senatorial District (2004 – 2005)
Treasurer (2004 – 2005)

Missouri State University (2011 – present)
Board of Governors

Missouri State University, Founder's Club (2008 – present)

Safer Families for Missouri PAC (2012 – present)
Trustee

Saint Paul's Episcopal Day School (2008 – present)
Trustee

University of Missouri, The Missouri 100 (2008 – 2011)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of these organizations discriminate or formerly discriminated on the basis of race, sex, religion or national origin through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

A Practitioner's Guide to Insurance Coverage Disputes in Missouri, 69 JOURNAL OF THE MISSOURI BAR 3 (May/June 2013) (co-authored with M. Blake Heath). Copy supplied.

Current Issues in Underinsured and Uninsured Insurance Coverage in Missouri, 68 JOURNAL OF THE MISSOURI BAR 4 (July/Aug. 2012) (co-authored with M. Blake Heath). Copy supplied.

When an Outdated Design Finally Needs to Be Put to Bed: The Government's "State of the Art" Defense in Road Design Cases, 67 JOURNAL OF THE MISSOURI BAR 5 (Sept./Oct. 2011) (co-authored with M. Blake Heath). Copy supplied.

Sly James for Mayor, Kansas City Star Editorial, February 7, 2011. Copy supplied.

On Tuesday, Voters Should Rally Behind KC's School Superintendent, Kansas City Star Editorial, April 4, 2010. Copy supplied.

Between 2007 and 2009, the Committee for County Progress (CCP) published a political blog. As chairman of the organization, I regularly posted commentary. Around this time period, I also occasionally commented on other authors' blog posts on the CCP website and on other websites. Copies supplied.

Employment Discrimination, Kansas City Star Editorial, September 28, 2007. Copy supplied.

A Vote for Beth Gottstein, Kansas City Star Editorial, February 19, 2007. Copy supplied.

Outstate Cases – Jury Trials in Rural Missouri After Tort Reform, THE MISSOURI TRIAL ATTORNEY, Fall/Winter 2006. Copy supplied.

Tired Truckers: The New Hours-of-Service Rules, MO. LAW. WKLY, September 25, 2006 (co-authored with R. Denise Henning). Copy supplied.

Admitting Liability: Is a Party Required to Accept an Admission? THE DAILY RECORD, September 22, 2005 (co-authored with R. Denise Henning). I have been unable to obtain a copy.

Pretensive Joinder in the State of Missouri, THE DAILY RECORD, September 23, 2004 (co-authored with R. Denise Henning). I have been unable to obtain a copy.

Claire McCaskill, Kansas City Star Editorial, July 8, 2004. Copy supplied.

Punitive Damages in Missouri Medical Malpractice, THE DAILY RECORD, March 25, 2004. Copy supplied.

Other Similar Incidents Evidence in Medical Malpractice Cases: It's Not Just for Product Liability Cases, THE DAILY RECORD, September 25, 2003 (co-authored with R. Denise Henning). I have been unable to obtain a copy.

Big Truck Litigation - Preserving the Evidence, THE DAILY RECORD, June 26, 2003 (co-authored with R. Denise Henning). Copy supplied.

Law Week: A Celebration of a Profession Dedicated to Service, THE DAILY RECORD, April 7, 2003. Copy supplied.

Corporate Negligence: Holding Hospitals Responsible for Failing to Protect Patients, MO. LAW. WKLY, March 17, 2003, at 15 (co-authored with R. Denise Henning). Copy supplied.

Bough Begins YLS Presidency with Answers, KC COUNSELOR, January 2003. Copy supplied.

KCMBBA YLS in 2003: Committed to Public Service, THE DAILY RECORD, December 12, 2002. Copy supplied.

Using What is Hidden in the Med. Mal. Statute of Limitations, THE DAILY RECORD, October 24, 2002 (co-authored with Anne Post). Copy supplied.

Settlements with Minors in Missouri and Kansas, THE DAILY RECORD, July 25, 2002 (co-authored with R. Denise Henning). Copy supplied.

Legal Issues in Missouri Product Liability Cases, THE DAILY RECORD, April 25, 2002 (co-authored with Brett A. Emison). Copy supplied.

Consortium and Derivative Claims, MISSOURI DAMAGES SECOND EDITION § 7 (Mo. Bar 2001) (co-authored with James E. Hullverson, Jr.). Copy supplied.

Comparative Fault in Crashworthiness Cases, 25 J. KAN. TRIAL LAW. ASS'N 2, 12 (Nov. 2001) (co-authored with Brett A. Emison). Copy supplied.

Video and Computer Evidence: Animation vs. Recreation, MO. LAW. WKLY, October 29, 2001, at 27 (co-authored with Chad Davis). Copy supplied.

Identifying Automotive Product Liability Cases, THE NEW LAWYER FORUM, supplement to TRIAL, JOURNAL OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA, page 1 (Winter 2001). Copy supplied (reprinted in multiple outlets).

Crossing the Center Line: Preemption in Automobile Product Liability Cases, 57 JOURNAL OF THE MISSOURI BAR 30 (Jan./Feb. 2001) (co-authored with Lynn R. Johnson). Copy supplied.

Race Discrimination, MISSOURI EMPLOYMENT DISCRIMINATION §7 (Mo. Bar 2000) (co-authored with Hon. Jon R. Gray & Nimrod T. Chapel, Jr.). Article and supplement supplied.

Kansas Supreme Court Affirms Strong Protection of the KPLA & Rejects Third Restatement, 23 J. KAN. TRIAL LAW. ASS'N 5, page 14 (May 2000) (co-authored with Lynn R. Johnson). Copy supplied.

Identifying Automotive Product Liability Case: A Primer on Common Car Defects, MO. LAW. WKLY, May 1, 2000, at 17 (co-authored with Lynn R. Johnson). Copy supplied.

Supplemental Jurisdiction and its Effect on Diversity Requirements in Class Actions; The Death and Rebirth of State Law Class Actions, 23 J. KAN. TRIAL LAW. ASS'N 4 (March 2000) (lead column) (co-authored with Andrea G. Bough). Copy supplied.

Issues in Employment Class Action Litigation, 56 JOURNAL OF THE MISSOURI BAR 37 (Jan./Feb. 2000) (co-authored with Dirk L. Hubbard). Copy supplied.

Pay Equality Remains Elusive for Women in the Workplace, KANSAS CITY BUSINESS JOURNAL, July 18, 1999 (co-authored with Ann E. Agnew). Copy supplied. (reprinted in multiple outlets).

Conflict of Laws and Multi-State Class Actions: How Variations in State Law Affect the Predominance Requirement of Rule 23(b)(3), 68 UMKC LAW REVIEW 1 (1999) (co-authored with Andrea G. Bough). Copy supplied.

Loss of Consortium Claim as a Separate Occurrence, MO. LAW. WKLY, June 28, 1999, at 18 (co-authored with Christopher Wright). Copy supplied.

Western District Welcomes New Millennium, MO. LAW. WKLY, February 15, 1999, at 19 (co-authored with Ann E. Agnew). Copy supplied.

The Restatement (Third) of Torts: Products Liability New Requirement of a Reasonable Alternative Design: A Radical Change in the Law, 22 J. KAN. TRIAL LAW. ASS'N 12 (Jan. 1999) (co-authored with Steve N. Six). Copy supplied.

Off the Team, But Not Out of the Game: Disbarred and Suspended Attorneys Practicing as Paralegals, NATIONAL PARALEGAL REPORTER, Volume 23-3, at 11 (1998) (co-authored with Rebecca A. Cull). Copy supplied.

Spitting in a Judge's Face: The Eight Circuit's Treatment of Rule 37 Discovery Sanctions of Dismissals and Defaults, 43 SOUTH DAKOTA L. REV. 36 (1998). Copy supplied.

Missouri Products Liability Law: 1998 in Review, MO. LAW. WKLY, December 14, 1998, at 15 (co-authored with Patrick A. Hamilton). Copy supplied.

ERISA's Breach of Duty Time Limitations: A Trap for the Unwary, MO. LAW. WKLY, November 2, 1998, at 12. Copy supplied.

"Markman" Hearings: A New Wrinkle in Patent Litigation, MO. LAW. WKLY, August 24, 1998, at 12 (co-authored with Clinton G. Newton). Copy supplied.

Damages in a Wrongful Adoption Case: How to Right a Wrong that Will Last a Lifetime, 20 J. KAN. TRIAL LAW. ASS'N (Jan. 1997). Copy supplied.

My law firm maintains a website (www.boughlawfirm.com). Much of the content was prepared by a web master, but I have personally created some of the web content. Any articles that I authored were reprinted elsewhere and are listed separately in 12a.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

As a member of the Board of Governors for Missouri State University, I have participated in public meetings. Minutes supplied where available.

December 13, 2013, Meeting. Minutes supplied.

October 18, 2013 (1:00 pm), Meeting. Minutes supplied.

October 18, 2013 (8:00 am), Meeting. Minutes supplied.

June 21, 2013, Meeting. Minutes supplied.

May 16, 2013, Meeting. Minutes supplied.

March 7-8, 2013, Meeting. Minutes supplied.

February 8, 2013, Meeting. Minutes supplied.

December 14, 2012, Meeting. Minutes supplied.

October 26, 2012, Meeting. Minutes supplied.

October 9, 2012, Meeting. Minutes supplied.

June 22, 2012, Meeting. Minutes supplied.

May 17, 2012, Meeting. Minutes supplied.

April 30, 2012, Meeting. Minutes supplied.

March 30, 2012, Meeting. Minutes supplied.

March 1-2, 2012, Meeting. Minutes supplied.

February 17, 2012, Meeting. Minutes supplied.

December 16, 2011, Meeting. Minutes supplied.

As a member of the Missouri Bar Board of Governors from 2008 – 2011, I have participated in public meetings. Minutes supplied where available.

September 21, 2011, Meeting. Minutes supplied.

September 29, 2010, Meeting. Minutes supplied.

Support Voters Deciding the Smoking Ban, October 8, 2007. Although I do not have a copy of the original letter, the content of the letter is available at <http://blogccp.blogspot.com/2007/10/support-voters-deciding-smoking-ban.html>.

Letter to Rep. Bryan Stevenson on HJR 49, April 15, 2008. Although I do not have a copy of the original letter, the content of the letter is available at <http://blogccp.blogspot.com/2008/04/hjr-41-some-republicans-wish-to-abandon.html>.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

August 23, 2013: Speaker, The Basics of Taking & Defending Effective Depositions, Deposition Goals, Laying the Foundation and Case Investigation, Missouri Bar, Jefferson City, MO. Notes supplied.

October 3, 2012: Speaker, Insurance Coverage Disputes and Stacking Underinsurance Coverage, Missouri Association of Trial Attorneys, Jefferson City, MO. A copy of the paper on which the discussion was based is supplied in response to Question 12a.

August 24, 2012: Speaker, The Basics of Taking & Defending Effective Depositions, Deposition Goals, Laying the Foundation and Case Investigation, Missouri Bar, Jefferson City, MO. I have no notes, transcript, or recording, but my notes would have been substantially similar to those used for the August 23, 2013 event.

July 19, 2012: Speaker, The Next Step Series: Federal Civil Practice, Missouri Bar, Jefferson City, MO. I have no notes, transcript or recording. The address for the Missouri Bar is 326 Monroe, Jefferson City, MO 65102.

May 23, 2012: Speaker, Litigation CLE: Three Big Decisions from the Appellate Courts in 2011, Underinsured Motorist Coverage, Kansas City Metropolitan Bar Association, Kansas City, MO. I discussed the decision in Long v. Shelter Insurance Companies, 351 S.W.2d 692 (Mo. Ct. App. 2011). I have no notes, transcript, or recording. The address for the Kansas City Metropolitan Bar Association is 2300 Main Street, Suite 100, Kansas City, MO 64106.

May 11–12, 2012: Truman Days. This is an annual event sponsored by the Jackson County Democratic Committee. In serving as the chair of the committee I made introductions and served as the emcee of the Saturday evening dinner. I have no notes, transcript or recording. The address of the Jackson County Democratic Committee is 308 West Maple, Independence, MO 64050.

October 13, 2011: Speaker, Uninsured and Underinsured Motorist Coverage in Missouri, Kansas City Metropolitan Bar Association, Kansas City, MO. A copy of the paper on which the discussion was based is supplied in response to Question 12a.

August 26, 2011: Speaker, Mastering the Art of Taking & Defending Effective Depositions, Deposition Goals, Laying the Foundation, and Case Investigation, Missouri Bar, Jefferson City, MO. I have no notes, transcript, or recording, but my notes would have been substantially similar to those used for the August 23, 2013 event.

May 7–8, 2011: Truman Days. This is an annual event sponsored by the Jackson County Democratic Committee. In serving as the chair of the committee I made introductions and served as the emcee of the Saturday evening dinner. I have no notes, transcript or recording. The address of the Jackson County Democratic Committee is 308 West Maple, Independence, MO 64050.

March 11, 2011: Speaker, Civil Jury Trial Demonstration, Direct & Cross-Examination of the Plaintiff's Non-Expert Witness, UMKC School of Law, Kansas City, MO. Notes supplied.

May 18, 2010: Speaker, Ethical Issues for Solo Attorneys or Small Firms. Association of Women Lawyers. Shawnee, KS. I have no notes, transcript or recording. The address for the Association of Women Lawyers is P.O. Box 860531, Shawnee, KS 66286.

May 7–8, 2010: Truman Days. This is an annual event sponsored by the Jackson County Democratic Committee. In serving as the chair of the committee I made introductions and served as the emcee of the Saturday evening dinner. I have no notes, transcript or recording. The address of the Jackson County Democratic Committee is 308 West Maple, Independence, MO 64050.

May 6, 2009: Speaker, Film and the Law Series Presents: 12 Angry Men, Expert Witnesses, UMKC School of Law, Kansas City, MO. I have no notes, transcript or recording. The address for UMKC School of Law is 5100 Rockhill Road, Kansas City, MO 64110.

May 1–2, 2009: Truman Days. This is an annual event sponsored by the Jackson County Democratic Committee. In serving as the chair of the committee I made introductions and served as the emcee of the Saturday evening dinner. I have no notes, transcript or recording. The address of the Jackson County Democratic Committee is 308 West Maple, Independence, MO 64050.

February 6, 2009: Speaker, Civil Jury Trial Demonstration, Direct & Cross-Examination of the Plaintiff's Expert, UMKC School of Law, Kansas City, MO. I have no notes, transcript, or recording, but my notes would have been substantially similar to those used for the March 11, 2011 event.

October 3–4, 2008: Speaker, Missouri Bar CLE Basic Trial College, Opening Statement – Faculty Demonstration and Closing Argument, Missouri Bar,

Jefferson City, MO. I have no notes, transcript or recording. The address for the Missouri Bar is 326 Monroe, Jefferson City, MO 65102.

August 19, 2008: Incoming Address as Chairman, Jackson County Democratic Committee, Kansas City, MO. Video recording available at <http://www.youtube.com/watch?v=EY-oMuGefRg>.

January 31, 2008: Speaker, Civil Jury Trial Demonstration, Direct & Cross-Examination of the Plaintiff's Expert, UMKC School of Law, Kansas City, MO. I have no notes, transcript, or recording, but my notes would have been substantially similar to those used for the March 11, 2011 event.

November 28, 2007: Four Freedoms Democratic Club Presidential Primary Profile, Kansas City, Missouri. I presented information on Senator John Edwards. I have no notes, transcript or recording. The address of the Four Freedoms Democratic Club is 7512 Walnut Street, Kansas City, MO 64114.

November 1, 2007: Speaker, Jury Selection and Influence, Selecting or Deselecting a Jury, UMKC School of Law, Kansas City, MO. I have no notes, transcript or recording. The address for UMKC School of Law is 5100 Rockhill Road, Kansas City, MO 64110.

February 21, 2006: Speaker, Deposition Fundamentals and Techniques, Earl O'Connor Inn of Court, Kansas City, MO. I have no notes, transcript or recording. The address for the Earl O'Connor Inn of Court is care of Scott Wissell, Lewis Rice & Fingersh, 1010 Walnut, Suite 500, Kansas City, MO 64106.

June 30, 2005: Speaker, UMKC School of Law 15 Hour Review, Use of Demonstrative Evidence at Mediations and Trial, UMKC School of Law, Kansas City, MO. I have no notes, transcript or recording. The address for the UMKC School of Law is 5100 Rockhill Road, Kansas City, MO 64110.

June 30, 2005: Speaker, UMKC School of Law 15 Hour Review, Punitive Damages in a Medical Malpractice Case, UMKC School of Law, Kansas City, MO. I have no notes, transcript or recording. The address for the UMKC School of Law is 5100 Rockhill Road, Kansas City, MO 64110.

April 16, 2004: Speaker, Tried and True Tips for the Trial Attorney, Trial Strategies for Obtaining Punitive Damages, Missouri Association of Trial Attorneys, Jefferson City, MO. I have no notes, transcript or recording. The address for the Missouri Association of Trial Attorneys is 240 East High Street, Suite 300, Jefferson City, MO 65102.

March 1, 2003: Speaker, Missouri Bar CLE Trial Institute, Expert Witnesses & Demonstrative Evidence, Missouri Bar, Jefferson City, MO. I have no notes,

transcript or recording. The address for the Missouri Bar is 326 Monroe, Jefferson City, MO 65102.

June 22, 2002: Moderator, Judicial Forum Panel – Western and Southern Districts of Missouri, Missouri Association of Trial Attorneys, Jefferson City, MO. I have no notes, transcript or recording. As the moderator, I took questions from the audience and ensured the program ran on time. Examples of questions related to effective oral argument, use of exhibits in oral arguments and the proper use of points relied upon. The address for the Missouri Association of Trial Attorneys is 240 East High Street, Suite 300, Jefferson City, MO 65102.

June 19, 2002: Speaker, Understanding Their Language: Medical Terminology in Missouri, Medical Terminology Overview, Lorman Education Services, Kansas City, MO. I have no notes, transcript or recording. The address for Lorman Education Services is P.O. Box 509, Eau Claire, WI 54702.

November 30, 2001: Speaker, Ethics in Personal Injury Litigation, Sanctions and Discovery Enforcement in State and Federal Courts, Jefferson City, MO. Notes supplied.

November 2, 2001: Speaker, Demonstrative Evidence, Demonstrative Evidence: Using Animation in Deposition and Trial, Kansas Trial Lawyers Association, Topeka, KS. I have no notes, transcript or recording. The address for the Kansas Trial Lawyers Association, now known as the Kansas Association for Justice, is 719 SW Van Buren, Suite 222, Topeka, KS 66603.

November 1, 2001: Speaker, Product Liability Cases: Factual and Legal Issues for Plaintiff and Defense Lawyers, Presenting the Plaintiff's Perspective, Kansas City Metropolitan Bar Association CLE Department, Kansas City, MO. I have no notes, transcript or recording. The address for the Kansas City Metropolitan Bar Association is 2300 Main Street, Suite 100, Kansas City, MO 64106.

June 15, 2001: Moderator, Federal Trial Practice Panel, Kansas City Metropolitan Bar Association CLE Department, Kansas City, MO. I have no notes, transcript or recording. The address for the Kansas City Metropolitan Bar Association is 2300 Main Street, Suite 100, Kansas City, MO 64106.

June 14, 2001: Speaker, Product Liability Claims and Legal Issues, Guest Lecturer – Products Liability Course, Washburn Law School, Topeka, KS. I have no notes, transcript or recording. The address for Washburn Law School is 1700 SW College Avenue, Topeka, KS 66621.

May 10, 2001: Speaker, Ethical Pitfalls in Preparing a Case for Trial, The Ethics of Complying with and Enforcing Compliance with Rule 26 Obligations, May 10, 2001, Association of Women Lawyers of Greater Kansas City and the UMKC School of Law, Kansas City, MO. I have no notes, transcript, or recording. The

address for UMKC School of Law is 5100 Rockhill Road, Kansas City, MO 64110.

May 2, 2001: Moderator, Hot Topics in Medical Product and Pharmaceutical Litigation, Missouri Bar, Jefferson City, MO. I have no notes, transcript or recording. The address for the Missouri Bar is 326 Monroe, Jefferson City, MO 65102.

June 29, 2000: Moderator, Federal Trial Practice Panel, Kansas City Metropolitan Bar Association CLE Department, Kansas City, MO. I have no notes, transcript or recording. The address for the Kansas City Metropolitan Bar Association is 2300 Main Street, Suite 100, Kansas City, MO 64106.

June 30, 1999: Speaker, Class Actions in Federal Court, Choice of Law and Jurisdictional Issues in a Class Action, Kansas City Metropolitan Bar Association, Kansas City, MO. I have no notes, transcript or recording. The address for the Kansas City Metropolitan Bar Association is 2300 Main Street, Suite 100, Kansas City, MO 64106.

June 24, 1999: Speaker, From Discovery to Closing Argument, Kansas City Metropolitan Bar Association CLE Department, Kansas City, MO. I have no notes, transcript or recording. The address for the Kansas City Metropolitan Bar Association is 2300 Main Street, Suite 100, Kansas City, MO 64106.

February 4, 1999: Faculty Chair and Young Lawyers Division Representative, "Judgment Day: A Lawyer's Soul on Trial," ABA Young Lawyers Division and the Torts and Insurance Practice Section, UCLA School of Law, Los Angeles, CA. The panel was on legal ethics for young lawyers. I have no notes, transcript or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, IL 60654.

November 12, 1998: Speaker, Products Liability, Review of Missouri Products Liability Law, Kansas City Metropolitan Bar Association CLE Department, Kansas City, MO. I have no notes, transcript or recording. The address for the Kansas City Metropolitan Bar Association is 2300 Main Street, Suite 100, Kansas City, MO 64106.

November 6, 1998: Speaker, KC's Top Ten: The Top Ten Things You Should Know About Practice in Kansas City's Municipal, State and Federal Courts, A Law Clerk's Perspective, Kansas City Metropolitan Bar Association Young Lawyers Section, Kansas City, MO. I have no notes, transcript or recording. The address for the Kansas City Metropolitan Bar Association is 2300 Main Street, Suite 100, Kansas City, MO 64106.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Bough Out at Sports Authority, Kansas City Star, February 1, 2013. Copy supplied (reprinted in multiple outlets).

Man Settles with Maker of Wheelchair After Fall, MO. LAW. WKLY, December 23, 2012. Copy supplied.

MSU Students Push for Sustainability, but CU Says Cost is a Concern, Springfield News-Leader, December 15, 2012. Copy supplied.

Coal Usage Spurs Debate, Springfield News-Leader, December 15, 2012. Copy supplied.

Judge Finds Bar Failed to Train Bouncer, MO. LAW. WKLY, November 24, 2012. Copy supplied.

Insiders Say State Supreme Court Pick is a Close Decision, MO. LAW. WKLY, November 17, 2012. Copy supplied.

MSU Governors Will Give Certain Topics a More In-Depth Look at Meetings, Springfield News-Leader, November 13, 2012. Copy supplied.

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Former Jackson County Democratic Boss Stephen Bough Claims that Jacob Turk is Violating Election Law, The Pitch Weekly, October 31, 2012. Copy supplied.

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Incumbent Sen. Claire McCaskill 'Makes Her Own Luck', Kansas City Star, October 21, 2012. Copy supplied.

Unique Statute Vexes Insurance Companies, MO. LAW. WKLY, October 14, 2012. Copy supplied.

Lawyers Dissect Defense's Federal Court Preference, MO. LAW. WKLY, October 7, 2012. Copy supplied.

Life Insurance Pays on Accidental Death, MO. LAW. WKLY, September 24, 2012. Copy supplied.

Family Settles Case Over Killing at Hotel, MO. LAW. WKLY, September 24, 2012. Copy supplied.

Man Settles Car Accident Case for Policy Limits, MO. LAW. WKLY, September 3, 2012. Copy supplied.

Family Settles Case Over Rear-End Crash, MO. LAW. WKLY, August 27, 2012. Copy supplied.

UMKC Professor: Akin Played Beautifully into Their Plan, KSHB, August 21, 2012. Copy supplied.

Romney's Choice of Ryan as Running Mate Gives Race a New Focus, Kansas City Star, August 12, 2012. Copy supplied.

Pedestrian Settles After Car Strikes Him at Mailbox, MO. LAW. WKLY, August 10, 2012. Copy supplied.

Sports Authority Quickly Gets a New Member, Kansas City Star, August 8, 2012. Copy supplied.

Nurse Settles Case Over Head-On Crash, MO. LAW. WKLY, July 30, 2012. Copy supplied.

Candidate's Third Time Isn't a Charm, Kansas City Star, March 19, 2012. Copy supplied.

"Ohio Keys Super Tuesday," KMBZ Radio, March 6, 2012. I have been unable to obtain a copy.

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Amount of Underinsured Coverage Can Be Tough to Decipher, MO. LAW. WKLY, December 19, 2011. Copy supplied.

Alumnus is Honored to Serve His Alma Mater, MSU Website, Spotlights, www.missouristate.edu website, approximately November of 2011. Copy supplied.

Woman Settles Case Over Pedestrian Death, MO. LAW. WKLY, November 21, 2011. Copy supplied.

School District Settles with Molested Student, MO. LAW. WKLY, November 14, 2011. Copy supplied.

GOP an Undisciplined Party in Disarray, Kansas City Star, November 11, 2011. Copy supplied.

Sanders Could Lead Missouri Democrats, Kansas City Star, November 11, 2011. Copy supplied.

Woman Settles After Disabling Auto Accident, MO. LAW. WKLY, September 26, 2011. Copy supplied.

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No Clear Frontrunner in Race to Take on McCaskill, Washington Post, May 22, 2011. Copy supplied.

A Slow Start Raises Concerns About the GOP in 2012 Race, Kansas City Star, April 17, 2011. Copy supplied.

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Just Leave it to Cleaver, The National Journal, January 18, 2011. Copy supplied.

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Insurer Must Pay Up as Part of Umbrella Policy, MO. LAW. WKLY, December 12, 2010. Copy supplied.

Stepfather Must Pay for Stepson's Actions, MO. LAW. WKLY, December 12, 2010. Copy supplied.

Schweich Ousts Montee as State Auditor, The Call Newspaper, November 10, 2010. Copy Supplied.

Blunt Refuses to Talk about Campaign Controversy, KSHB, October 27, 2010. Copy supplied.

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Judge Approves Stacking Man's Insurance Policies, MO. LAW. WKLY, October 17, 2010. Copy supplied.

Missouri, Kansas Feel GOP's High Tide, Kansas City Star, October 3, 2010. Copy supplied.

GOP Chairman Michael Steele Rallies the Party's Faithful in Lee's Summit, Kansas City Star, September 29, 2010. Copy supplied.

Prime Buzz, Kansas City Star, September 17, 2010. Copy supplied.

Week in Review, KMBZ Radio, September 10, 2010. Audio recording available at <http://media.kmbz.com/a/34062808/week-in-review.htm?q=Bough>.

Carnahan Bucks Party to Support Extension of Bush's Tax Cuts, Kansas City Star, August 20, 2010. Copy supplied.

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Week in Review, KMBZ Radio, July 23, 2010. Audio recording at <http://media.kmbz.com/a/33914198/week-in-review.htm?q=Bough>.

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Introducing the Attorney General Candidate Who Doesn't Seem to Want to Know You, Kansas City Star, April of 2009. Copy supplied.

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Democrats are Afraid of Their Own Shadows, The Pitch, January 28, 2010. Copy supplied.

Money Matters, MO. LAW. WKLY, January 25, 2010. Copy supplied.

Arbitrators Conclude Injuries Led to Death Two Years Later, MO. LAW. WKLY, January 25, 2010. Copy supplied.

Campaigning for Jackson County Legislature has Become Hard-Fought, High-Dollared, Kansas City Star, January 12, 2010. Copy supplied.

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Missing Guardrail Was Factor in Car Accident, MO. LAW. WKLY, December 21, 2009. Copy supplied.

Girl Awarded in Dad's Wrongful Death Suit, MO. LAW. WKLY, November 15, 2009. Copy supplied.

National Health Discussions Rekindle Tort Reform Debate, KC Business Journal, September 20, 2009. Copy supplied.

Bond and Two Other GOP Senators to Speak at Private Health Care Forum, Kansas City Star, August 29, 2009. Copy supplied.

Two Missouri Lawmakers Resign After Pleading Guilty in Campaign-Finance Investigation, Kansas City Star, August 25, 2009. Copy supplied.

Lawyers Say Medicare Won't Let their Clients Repay the Government, Kansas City Star, July 13, 2009. Copy supplied.

No New Trial After Juror Withholds the Truth, MO. LAW. WKLY, May 21, 2009. Copy supplied.

Bill Would Ease Deductions on Plaintiffs' Attorneys, KC Business Journal, May 3, 2009. Copy supplied.

Election is Two Years Away, but KC Mayoral Candidate Jumps on with Fundraiser, Kansas City Star, March 1, 2009. Copy supplied.

Area Politicians React to Obama's speech, Kansas City Star, February 25, 2009. Copy supplied.

Mayor Funkhouser's Image is Tarnished, but There is Hope, Kansas City Star, January 6, 2009. Copy supplied.

The Unpredictable African-American Vote, Hindustan Times, November 1, 2008. Copy supplied.

Rep. Graves' Father Wants Son's Rival to Change Ad, Washington Post, October 24, 2008. Copy supplied.

Family of Murder Victim Files Wrongful Death Lawsuit, Columbia Tribune, October 14, 2008. Copy supplied.

Family Gets \$1 Million for Wrongful Death, MO. LAW. WKLY, September 29, 2008. Copy supplied.

Election Increases Diversity on Bar's Board of Governors, MO. LAW. WKLY, August 25, 2008. Copy supplied.

CCP is One of the First to Endorse Nixon, Buzz Blog, approximately July of 2008. Copy supplied.

Counselors Contest: After 16 years, An Attorney General's Race, Columbia Tribune, July 13, 2008. Copy supplied.

Harris Nabs CCP Endorsement, Missouri Political News, June 6, 2008. Copy supplied.

Jackson County group supports Jeff Harris for Attorney General, MO. LAW. WKLY, June 6, 2008. Copy supplied.

Post-Primary Dilemma: What to Do with Clinton, Kansas City Star, June 5, 2008. Copy supplied.

Committee for County Progress to Posthumously Honor Cathy Connealy at the Legislative Wrap Up Event, May 28, 2008. Press Release supplied.

AG Hopefuls Square Off in Debate, Columbia Tribune, May 23, 2008. Copy supplied.

Why Run for Attorney General? Teacher isn't telling, Kansas City Star, April 6, 2008. Copy supplied.

Top Defense Verdicts of 2007, MO. LAW. WKLY, January 28, 2008. Copy supplied.

Wendt, Goss Team Up to Form Personal Injury, Med Mal Firm, KC Business Journal, January 27, 2008. Copy supplied.

Federal Jury Acquits Former Jackson County Executive Kathryn Shields, Husband, MO. LAW. WKLY, November 8, 2007. Copy supplied.

Missouri Governor Blunt, Lawyers Still Disagree on Tort Reform, October 4, 2007. Copy supplied.

Company Prevails in Liability over Fatal Fuel Fire, MO. LAW. WKLY, September 10, 2007. Copy supplied.

Graves testimony prompts question on voter fraud in Missouri, MO. LAW. WKLY, May 22, 2007. Copy supplied.

Former University of Missouri-Kansas City Law Dean Dies, MO. LAW. WKLY, April 27, 2007. Copy supplied.

Vote 'No' on Mean-Spirited Arguments, Kansas City Star, November 2, 2006. Copy supplied.

New Conference Focuses on Small KC-Area Law Offices, KC Business Journal, September 29, 2006. Copy supplied.

Adjuncts Take Courtroom Experiences to Classrooms, MO. LAW. WKLY, September 27, 2006. Copy supplied.

Insured Exposed to \$6.7 Million Excess Judgment, MO. LAW. WKLY, September 11, 2006. Copy supplied.

King, Queen Crowned at LEAP Mardi Gras Event, MO. LAW. WKLY, March 13, 2006. Copy supplied. Reprint in other publications under *KC Metropolitan Bar Assn crowns King and Queen at annual LEAP Mardi Gras Luncheon*.

Missouri Farm Boy Lon Walters Establishing Himself as Respected Kansas City Attorney, MO. LAW. WKLY, February 13, 2006. Copy supplied.

Class Action Fairness Act Slow to Impact Court System, MO. LAW. WKLY, October 24, 2005. Copy supplied.

Death of Man on Tractor Draws \$8 Million Verdict, MO. LAW. WKLY, March 28, 2005. Copy supplied.

Gov. Matt Blunt Announces Support of Tort Reform Legislation, MO. LAW. WKLY, February 11, 2005. Copy supplied.

Hospital Wins Verdict in Post-Op Infection Case, MO. LAW. WKLY, January 31, 2005. Copy supplied.

Up and Coming Lawyers 2004, MO. LAW. WKLY, August 30, 2004. Copy supplied.

KC's Legal Community Weighs in on Arena Issue, MO. LAW. WKLY, August 2, 2004. Copy supplied.

Farmer Injured at Fertilizer Plant Gets \$2.2M Judgment, MO. LAW. WKLY, July 19, 2004. Copy supplied.

Legislators Disagree on Solution to Med-mal Reform, MO. LAW. WKLY, May 10, 2004. Copy supplied.

Kansas City Legal Leaders Shine at Daily Record's Event, MO. LAW. WKLY, April 19, 2004. Copy supplied.

Punitive Damages Awarded vs. Doctor in Med-Mal Case, MO. LAW. WKLY, December 22, 2003. Copy supplied.

Jury Penalizes Former Chillicothe Doctor \$340,000, KC Business Journal, December 10, 2003. Copy supplied.

For Young, Solo Lawyers Business Mentoring May Be Most Important Discovery, KC Business Journal, June 8, 2003. Copy supplied.

Kansas City law Firm Celebrates One-Year Anniversary, MO. LAW. WKLY, February 24, 2003. Copy supplied.

Safety Rules Lack Bite, Group Says Consumers Union Pushes for Tougher Enforcement, Akron Beacon Journal, June 18, 2001. Copy supplied.

Where There's Smoke, Forbes, December 11, 2000. Copy supplied.

KC Lawyers Target Firestone, MO. LAW. WKLY, September 18, 2000. Copy supplied.

Tire Lawsuits Filed; Kansas City Residents Search for Replacements, KC Business Journal, September 17, 2000. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

My judicial experience consists of serving as the Judge Pro Tem for Judge Jim Myers in

Roeland Park Municipal Court in Roeland Park, Missouri from 1999 to 2001. A Judge Pro Tem fills in for the regular judge. If the regular municipal judge was unable to hear a municipal docket due to a vacation or a conflict on his calendar, I would manage the docket. These dockets consisted of taking a plea to a municipal charge or arranging for payments of fines. I did not conduct any trials, issue opinions, or sentence defendants.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

Because of the nature of five or six matters in which I served as a Judge Pro Tem, I did not preside over any trials.

- i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.

Because of the nature of five or six matters in which I served as a Judge Pro Tem, I did not issue any written opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

Because of the nature of five or six matters in which I served as a Judge Pro Tem, I did not issue preside over any cases. Instead, I took pleas on municipal charges or arranged for the payment of fines.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

Because of the nature of five or six matters in which I served as a Judge Pro Tem, I did not issue any written opinions.

- e. Provide a list of all cases in which certiorari was requested or granted.

None.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

None.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not held judicial office other than as Judge Pro Tem in the City of Roeland Park. I did not have to recuse myself from any proceedings. While serving as the judge pro tem, I reviewed each case to determine whether I knew the defendant or any of the key witnesses, in which case I would have recused myself. As a non-resident of Roeland Park, this issue never arose.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Eighth Ward Democratic Committeeman, Jackson County Democratic Committee (2004 – 2012). I was elected by members of the general public who requested the Democratic ballot in the August primary election.

Tenth Senatorial District, Treasurer, Jackson County Democratic Committee (2004 – 2005). Consistent with state law, I was selected to serve as Treasurer by the ward and precinct committeeman who were elected in the primary.

Kansas City Representative, The Missouri Bar Board of Governors, (2008 – 2011). I was elected by attorneys in District 12 in December 2008 to fill a vacancy and in 2009, I was re-elected to a full two-year term.

Governor, Missouri State University Board of Governors (2011 – present). I was appointed by the Governor of the State of Missouri on November 2, 2011, and confirmed by the Missouri Senate, for a term that expired on January 1, 2013. As is the regular practice for this position, I continue to serve until the Governor appoints my replacement.

Commissioner, Jackson County Sports Complex Authority (2012 – 2013). I was appointed by the Governor of the State of Missouri on August 8, 2012, after which I served as an acting member while awaiting confirmation by the Missouri Senate. On February 1, 2013, I withdrew my name from consideration for the nomination.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

After consulting my records and the Internet, I have provided the information regarding my political activities that I can recall, though there may be some

events or endorsements that I have missed. My wife and I have hosted numerous fundraisers for state and federal candidates at our home, as well as co-hosted events at other locations. These fundraisers have been on behalf of the following campaigns: then-Secretary of State Robin Carnahan for U.S. Senate (2010), then-Representative Jason Kander for Missouri Secretary of State (2012), Attorney General Chris Koster for Missouri Attorney General (2012), Senator Claire McCaskill for U.S. Senate (2006 and 2012), Representative Kevin McManus for Missouri State Representative (2010 and 2012), Governor Jay Nixon for Missouri Governor (2008 and 2012) and Treasurer Clint Zweifel for Missouri Treasurer (2008 and 2012). Occasionally, I have also been a volunteer door knocker. The candidates for whom I specifically remember knocking on doors was then-State Representative Jason Kander in his campaign to become Missouri Secretary of State (2012), Prosecutor Jim Kanatzar for Jackson County Prosecutor (2008) and Representative Jason Klumb for Missouri State Senate (2006). I have also written a letter to the editor of the Kansas City Star supporting the election of Mayor Sly James as Mayor of Kansas City (2011). I have personally endorsed the campaigns of Senator Jolie Justus for Missouri State Senate (2010), Representative John Mayfield for Missouri State Representative (2012) and Eileen Weir for Mayor for the City of Independence (2013). In 2008, I also served as a credentialed delegate to the Democratic National Convention.

From 2008 to 2012, I was the chair of the Jackson County Democratic Committee. In this capacity, I hosted fundraisers for political candidates for local, state, and national offices representing Jackson County, Missouri. After consulting my records and the Internet, I have provided the information that I can recall, but it is possible that there are other events or endorsements that I have missed. The fundraisers included Representative Emmanuel Cleaver for U.S. House of Representatives (2008, 2010 and 2012), then-Representative Jason Kander for Missouri Secretary of State (2012), Attorney General Chris Koster for Missouri Attorney General (2008 and 2012), Senator Claire McCaskill for U.S. Senate (2012), Governor Jay Nixon for Missouri Governor (2008 and 2012) and State Treasurer Clint Zweifel for Missouri Treasurer (2008 and 2012). I also participated in Labor Day events and attended local community fairs in Lee's Summit and Independence, where I would introduce speakers (including political candidates).

From 2010 to 2012, I was the treasurer for Kansas Citizens United for Educational Achievement (KCU4EA), which was formed to support candidates in the non-partisan race for Kansas City District School Board. In 2010 KCU4EA endorsed Crispin Rea, Kyleen Carroll and Joe Jackson. In 2012, KCU4EA endorsed Jon Hile, Candace Koba, Marisoi Montero and Airick Leonard West.

From 2006 to 2008, I was the president of the Committee for County Progress, which supports Democrats running for office in Jackson County, Missouri. The organization held fundraisers, organized debates, and endorsed candidates in primary elections. To the best of my memory, the Committee for County

Progress raised money through membership contributions and then donated these funds to candidates. I recall that the organization supported Representative Emmanuel Cleaver for U.S. House of Representatives (2006 and 2008), Attorney General Chris Koster for Missouri Attorney General (2008), Senator Claire McCaskill for U.S. Senate (2006), Representative Sam Page for Missouri Lieutenant Governor (2008) and State Treasurer Clint Zweifel for Missouri Treasurer (2008).

Although perhaps not directly responsive to this question, since 2012, I have served as a trustee for the Safer Families for Missouri PAC for the Missouri Association of Trial Attorneys, which has supported Democratic candidates for the Missouri House and Senate. Since 2008, I also have served as a trustee for the Justice Institute of Missouri PAC, which exists solely for the purpose of defending the Missouri Non-Partisan Court Plan. Rather than holding fundraisers for or endorsing individual candidates, the Justice Institute has solicited donations from Missouri law firms and worked with The Missouri Bar and other legal organizations to fund lobbying efforts against changes to the Missouri Non-Partisan Court Plan.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Law clerk to Judge Scott O. Wright, United States District Court Judge for the Western District of Missouri (1997 – 1999)

- ii. whether you practiced alone, and if so, the addresses and dates;

2006 – 2009
The Law Offices of Stephen R. Bough
917 West 43rd Street
Kansas City, MO 64111

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1999 – 2002
Shamberg, Johnson & Bergman
2600 Grand Boulevard, Suite 550
Kansas City, MO 64108
Associate Attorney

2002 – 2006
Henning & Bough
1044 Main Street, Suite 500
Kansas City, MO 64105
Attorney

2006 – present
The Law Offices of Stephen R. Bough
917 West 43rd Street
Kansas City, MO 64111
Attorney

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

After clerking for Judge Scott O. Wright, I began a plaintiff's civil trial practice, which I have maintained until this date. Throughout my career, I have litigated personal injury cases, including cases involving wrongful death, product liability, medical malpractice, and workplace accidents. As my career has progressed I have become more focused on insurance coverage disputes arising out of personal injury claims.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My typical clients are personal injury victims or individuals making claims against insurance companies. However, I have frequently represented companies, small businesses and even civil defendants in claims against insurance companies.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

The vast majority of my practice has been in litigation. My practice has been at least 95% litigation and I have appeared in federal and state courts frequently.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 10% |
| 2. state courts of record: | 90% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | 0% |

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 17 lawsuits to verdict or judgment. In addition, I have tried two more cases that settled in the middle of trial. In all but one of those cases I served as lead counsel or co-lead counsel.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 57% |
| 2. non-jury: | 43% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared in the United States Supreme Court.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- f. the date of representation;
- g. the name of the court and the name of the judge or judges before whom the case was litigated; and
- h. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I have listed the cases below in chronological order.

1. Ware v. Massen, Case No.: 01CV211124 (Jackson County, Missouri); Judge Vernon E. Scoville III.

I was lead counsel to the plaintiff in this 2003 personal injury case. I represented Mr. Ware, who was injured when the defendant was backing up on the highway after missing his exit. The insurance company refused to settle because it took the position that Ware was responsible for the accident because he rear-ended the defendant. Only after I put witnesses on the stand in a jury trial did the insurance company change its position. The case settled after two days of trial.

Defense counsel

Timothy J. Mudd
Cummings, McClorey
1150 Grand Boulevard, Suite 270
Kansas City, MO 64106
(816) 842-1880

2. Lightner v. Guerra, Case No.: 02CV220365 (Jackson County, Missouri); Judge Marco Roldan.

I was lead counsel to Mr. Lightner in this 2003 medical malpractice case. Mr. Lightner alleged that the doctor failed to follow proper sterile technique both during and after surgery, resulting in a horrific infection. Many nurses testified as to having witnessed the doctor's lack of sterile technique. After a five-day jury trial, the jury returned a verdict of \$340,000, including a \$200,000 punitive damage verdict against the doctor.

Defense counsel

David Madden
Fisher Patterson
9393 West 110th Street
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(913) 339-6757

Tom Rottinghaus
Wagstaff & Cartmell
4740 Grand Avenue
Kansas City, MO 64112
(816) 701-1100

Co-Counsel

Denise Henning
9601 Northeast Barry Road, Suite 201
Kansas City, MO 64158
(816) 221-8442

3. Taggart v. CTL Farm Services, Case No.: CV103-008979 CC (Clay County, Missouri); Judge A. Rex Gabbert.

I was lead counsel to Mr. Taggart in this litigation. Mr. Taggart had been injured by an anhydrous ammonia explosion caused by a severed supply line for a nurse tank. Following a bench trial, the court found that CTL Farm Services, which owned the tank, failed to take appropriate steps to prevent a major leakage in the case of a severed supply line. The court returned a \$2.2 million judgment for Taggart. I then represented Taggart in a suit against the original defendant's insurance company to collect on the judgment. Taggart v. CTL Farm Services, Case No. CV104-006121 CC (Clay County, Missouri). The court determined that the liability for the explosion fell within the insurance policy's coverage and ordered the insurance company to pay. I continued to represent Taggart after the judgment was taken on appeal, and the case settled thereafter.

Defense counsel

Tonna Farrar
Bonnett, Fairbourn
2325 East Camelback Road
Phoenix, AZ 85016
(503) 628-3052

4. Mehus v. Emporia State University, Case No. 03-2066 KHV (D. Kan.); Judge Kathryn H. Vratil.

I was co-lead counsel to Ms. Mehus, a college volleyball coach in 2004. This case was tried to a jury on a Title IX wage discrimination claim for a college volleyball coach. Ms. Mehus alleged that despite having longer tenure and greater success than the male coaches, her salary and her program were funded to a lesser degree. She also alleged that she was treated differently than other college coaches and was not paid equally. After a week-long trial the jury found for Emporia State. During post-trial filings regarding the exclusion of certain evidence, the case settled.

Defense counsel

Lori Schultz
Shook Hardy & Bacon
2555 Grand Boulevard
Kansas City, MO 64108
(816) 474-6550

Co-Counsel

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Kansas City, MO 64158
(816) 221-8442

5. Taliaferro v. Green Valley Trucking, Case No.: 02CV233442 (Jackson County, Missouri); Judge Marco Roldan.

I was co-lead counsel to the plaintiff in 2005. This was a wrongful death case for the family. A semi-truck driver for Green Valley Trucking ran over Mr. Taliaferro as Mr. Taliaferro was operating a tractor on the shoulder of a highway. The semi-truck driver was on her first across the country trip and allegedly fell asleep and drifted on to the shoulder. Following a six-day trial, a jury returned an \$8,000,000 verdict for plaintiff.

Defense counsel

Al Maxwell
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
3344 Peachtree Road, NE, Suite 2400
Atlanta, GA 30326
(404) 876-2700

Co-Counsel

Denise Henning
9601 Northeast Barry Road, Suite 201
Kansas City, MO 64158
(816) 221-8442

6. Sapp v. Eckleberry et. al., Case No. 0516-CV22177 (Jackson County, Missouri); Judge Mike Manners.

I was lead counsel representing defendant Mr. Eckleberry in 2008. Plaintiff was filling an M.F.A. gas tank when the tank exploded. Plaintiff sued the manufacturer of the safety valve at the top of the tank for defective design and the welder, Mr. Eckleberry, for failing to properly weld the base of the tank. Based upon the size of the demand and the fact that we obtained a defense verdict for Mr. Eckleberry after a three-week jury trial, I was recognized as one of the defense lawyers of the year by Missouri Lawyers Weekly.

Plaintiff's counsel

J. Kent Emison
Langdon & Emison
911 Main Street
Lexington, MO 64067
(660) 259-6175

7. Goodman v. Angle, Case No.: 0816-CV12350 (Jackson County, Missouri); Judge John Torrence.

I was lead counsel to Ms. Goodman in 2010. She was experiencing back pain due to an injury on the job. During a session with a massage therapist, she became paralyzed. Ms. Goodman alleged that the massage therapist should have informed her that she was not a candidate for massage therapy. The massage therapist alleged that Ms. Goodman did not fully disclose pre-existing conditions. Following a five-day trial, the jury returned a verdict for the defendant.

Defense counsel

John Weist
Long & Luder
9401 Indian Creek Parkway, Suite 800
Overland Park, KS 66210
(913) 491-9300

Co-Counsel

Blake Heath
The Law Offices of Stephen R. Bough
917 West 43rd Street
Kansas City, MO 64111
(816) 931-0048

8. Lero v. Mace, Case No.: 09CA-CV00669 (Cass County, Missouri); Judge R. Michael Wagner.

I was lead counsel to plaintiffs in 2010. The Leros' daughter died in a tragic car wreck caused by a drunk teenage driver. The plaintiffs brought suit against Mr. Mace, who was the step-father of the driver. The Leros alleged that Mr. Mace negligently entrusted a dangerous instrument to a minor. At trial it was revealed that Mr. Mace knew his step-son had received numerous traffic tickets and frequently drove under the influence of alcohol. This case was tried to the judge and resulted in a \$2,000,000 judgment for the plaintiffs. This judgment resulted in additional insurance coverage litigation in the same docket because one carrier claimed there was no coverage for negligent entrustment and another carrier claimed that the lack of coverage did not qualify for uninsured coverage.

Defense counsel

Randy Cain
Cain & Cain
4971 Northeast Goodview Circle, Suite B
Lee's Summit, MO 64064
(816) 795-7714

Co-Counsel

Kelly McCambridge
1308 Northeast Windsor
Lee's Summit, MO 64086
(816) 389-8345

9. Long v. Shelter, Case No. 351 S.W.3d 692 (Mo. App. W.D. 2011)(originally filed in Clay County, Missouri); Judge Rex Gabbert.

I was lead counsel for the Long family. Mr. Long was killed in a car wreck and his family made claims against his insurance company for underinsured motorist benefits. The company refused to pay benefits under stacked underinsurance policies, despite Mr. Long being listed as an insured driver. The trial court found that Mr. Long should have been fully covered through all the policies in which he was listed as an insured. The Missouri Court of Appeals affirmed, and the Missouri Supreme Court denied defendant's request for transfer. Long v. Shelter is now one of the lead insurance coverage dispute opinions cited by attorneys and courts.

Defense Counsel

Clay Crawford
Foland, Wickens et al.
911 Main Street
Kansas City, MO 64105
(816) 472-7474

10. Jacks v. The Velvet Dog, Case No. 1210-CV04024 (Jackson County, Missouri); Judge Robert Schieber.

I was lead counsel to plaintiff in 2012. Mr. Jacks was a patron at a bar. An altercation occurred with the bouncer when Jacks tried to re-enter the bar after going outside to smoke. Mr. Jacks sued the bar, alleging negligent hiring, training and the failure to have proper procedures in place to avoid these injuries. Following a two-week bench trial, the court entered a \$3,750,000 judgment for the plaintiff. I then represented Mr. Jacks in a suit against the insurance company to collect on the judgment and the case settled. Jacks v. The Velvet Dog, Case No. 1216-CV28830 (Jackson County, Missouri); Judge John Torrence.

Defense counsel

Timothy J. Mudd
Cummings, McClorey
1150 Grand Boulevard, Suite 270
Kansas City, MO 64106
(816) 842-1880

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have played an active role in the organized bar at the state and local levels. For example, I have served as a director and in other leadership capacities for the Missouri Bar Association, the Kansas City Metropolitan Bar Association, and the Missouri Association of Trial Attorneys. On the Board of Governors of the Missouri Bar Association, I was most proud of our effort to ensure that increased fees from pro hac vice admissions were directed to Legal Aid organizations. As chairman of the Young Lawyers Section of the Kansas City Metropolitan Bar Association, I worked to ensure public service was a focus and established a fundraiser to support a community organization. On the Missouri Association of Trial Attorneys Board of Governors, I have frequently volunteered to teach continuing legal education seminars.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Federal Jurisdiction, UMKC School of Law, 2003: The course covered the limits and extent of federal judicial power. Syllabus supplied.

Trial Advocacy, UMKC School of Law, 2005-2009: The courses involved modeling a different aspect of the trial each week, allowing the students to present and offering constructive suggestions. I do not have a syllabus for these courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If confirmed, I have no plans for outside employment during my service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Financial Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would recuse myself from any case in which my firm had previously participated. I am unaware of any persons, parties, categories of litigation or financial arrangements that are likely to present potential conflicts of interests. I would review individual cases to determine if a conflict of interest arises, apply applicable rules of ethics and conflicts of interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would consult applicable rules, canons and decisions addressing conflicts of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and any other materials addressing conflicts of interest and appearances of conflicts of interest, with an eye toward developing a general framework to be applied in any case, supplemented by case-specific inquiries where warranted.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My firm has been particularly devoted to serving the poor and disadvantaged through Legal Aid of Western Missouri. I previously served as the chair of the Volunteer Attorney Project's advisory council. I regularly take pro bono clients through the Volunteer Attorney Project for phantom debt cases (cases where corporations sell its debt to high volume bill collectors who aggressively pursue the debt through associate circuit

court cases). I am currently listed on the Missouri Bar Pro Bono Wall of Fame. Annually I volunteer in excess of 80 hours a year on these cases and serving on the Volunteer Attorney Project advisory council.

In addition, I have served on the Board of Directors of Lawyers Encouraging Academic Performance (LEAP) since 2005, including as the raffle chair for its benefit events for the last five years. LEAP is sponsored by the bar associations in the Kansas City area and hosts an annual fundraiser to benefit Operation Breakthrough, which serves as a day care for the poorest members of Kansas City.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In 2009, I approached Senator Claire McCaskill about my interest in serving on the federal judiciary. In June 2013, vacancies in the Western District of Missouri had been announced, and Senator McCaskill's staff asked me for an updated resume. Later that month, her staff notified me that my name would be sent to the White House. Since June 12, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 18, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On January 16, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2013

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Bough, Stephen R.	2. Court or Organization U.S. District Court, Western District of Missouri	3. Date of Report 01/16/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge, Active	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 01/16/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 12/31/2013
7. Chambers or Office Address 917 W. 43rd Street, Suite 100 Kansas City, MO 64111		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. President	The Law Offices of Stephen R. Bough
2. Board member	UMKC Law Foundation
3. Governor	Missouri Association of Trial Attorneys
4. Director	Lawyers Encouraging Academic Performance
5. Governor	Missouri State University
6. Board Member	Justice Institute of Missouri
7. Director	Missouri Institute for Justice
8. Board Member	St. Paul's Episcopal Day School
9. Director	Safer Families for Missouri

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Bough, Stephen R.	01/16/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2013	The Law Offices of Stephen R. Bough	\$204,554.00
2. 2012	The Law Offices of Stephen R. Bough	\$179,927.00
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.**(Dollar amount not required except for honoraria.)*☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2013	Stinson Morrison Hecker, salary
2.	
3.	
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.**(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Bough, Stephen R.	01/16/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Department of Education - Direct Loan, MOHELA	Education Loans	M
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Bough, Stephen R.	01/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-59 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Rental Property #1, Kansas City, MO	D	Rent	M	W	Exempt				
2. Rental Property #2, Kansas City, MO	D	Rent	M	W					
3. Rental Property #3, Belton, MO	D	Rent	M	W					
4. The Law Offices of Stephen R. Bough		None	L	W					
5. Missouri Bank & Trust (CD, checking)	B	Interest	L	T					
6. American Funds AMCAP Fund	A	Dividend	J	T					
7. American Funds Capital World Bond Fund	A	Dividend	J	T					
8. American Funds EuroPacific Growth Fund	A	Dividend	J	T					
9. American Funds Fundamental Investors Fund	A	Dividend	J	T					
10. American Funds New Perspective Fund	A	Dividend	J	T					
11. Ivy Asset Strategy Fund	A	Dividend	M	T					
12. Ivy Cundiil Global Value Fund	A	Dividend	J	T					
13. Ivy Dividend Opportunities Fund	A	Dividend	M	T					
14. Ivy Energy Fund		None	J	T					
15. Ivy European Opportunities Fund	A	Dividend	J	T					
16. Ivy Global Bond	A	Dividend	J	T					
17. Ivy Global Income Allocation Fund	B	Dividend	L	T					

1. Income Gain Codes (See Columns B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$100,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Bough, Stephen R.	01/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	Place "(X)" after each asset exempt from prior disclosure								
18. Ivy Global Natural Resources Fund		None	K	T					
19. Ivy High Income Fund	A	Dividend	K	T					
20. Ivy Managed International Opportunities Fund	A	Dividend	L	T					
21. Ivy Mid Cap Growth Fund		None	J	T					
22. Ivy Science and Technology Fund		None	K	T					
23. Ivy Small Cap Value Fund	A	Dividend	K	T					
24. Vanguard Target Retirement 2035 Fund		None	J	T					
25. Waddell & Reed Core Investment	A	Dividend	L	T					
26. Waddell & Reed Asset Strategy Fund	A	Dividend	M	T					
27. Waddell & Reed Continental Income Fund	A	Dividend	J	T					
28. Waddell & Reed Dividend Opportunities Fund	A	Dividend	K	T					
29. Waddell & Reed Global Bond Fund	A	Dividend	K	T					
30. Waddell & Reed High Income Fund	B	Dividend	K	T					
31. Waddell & Reed InvestEd Balanced Portfolio		None	L	T					
32. Waddell & Reed InvestEd Conservative Portfolio		None	J	T					
33. Waddell & Reed InvestEd Growth Portfolio		None	J	T					
34. Waddell & Reed New Concepts Fund		None	J	T					

1. Income Origin Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$250,001 - \$500,000	B = \$1,001 - \$2,500 G = \$100,001 - \$100,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes: (See Column C2)					

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Name of Person Reporting	Date of Report
Bough, Stephen R.	01/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Waddell & Reed Science and Technology Fund		None	M	T					
36. Waddell & Reed Small Cap Fund		None	J	T					
37. The Law Offices of Stephen R. Bough		None	L	W					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessed/Net W = Estimated	T = Cash Market	

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Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Bough, Stephen R.	01/16/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Stephen R. Bough**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks (including CDs)		75	811	Notes payable to banks-secured (auto)		7	534
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	024	077	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		333	200
Real estate owned – see schedule		988	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		112	000	Education loans		137	852
Cash value-life insurance							
Other assets itemize:							
The Law Offices of Stephen R. Bough		75	000				
				Total liabilities		478	586
				Net Worth	1	796	302
Total Assets	2	274	888	Total liabilities and net worth	2	274	888
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		270	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**Listed Securities

American Funds AMCAP Fund	9,016
American Funds Capital World Bond Fund	3,019
American Funds EuroPacific Growth Fund	8,013
American Funds Fundamental Investors Fund	9,013
American Funds New Perspective Fund	5,187
Ivy Asset Strategy Fund	137,161
Ivy Cundill Global Value Fund	3,102
Ivy Dividend Opportunities Fund	102,982
Ivy Energy Fund	13,254
Ivy European Opportunities Fund	2,722
Ivy Global Bond	9,548
Ivy Global Income Allocation Fund	67,156
Ivy Global Natural Resources Fund	41,901
Ivy High Income Fund	36,971
Ivy Managed International Opportunities Fund	61,023
Ivy Mid Cap Growth Fund	5,699
Ivy Science and Technology Fund	19,156
Ivy Small Cap Value Fund	36,678
Vanguard Target Retirement 2035 Fund	1,969
Waddell & Reed Asset Strategy Fund	129,923
Waddell & Reed Continental Income Fund	857
Waddell & Reed Core Investment	53,764
Waddell & Reed Dividend Opportunities Fund	22,192
Waddell & Reed Global Bond Fund	33,912
Waddell & Reed High Income Fund	23,835
Waddell & Reed InvestEd Balanced Portfolio	65,083
Waddell & Reed InvestEd Conservative Portfolio	1,362
Waddell & Reed InvestEd Growth Portfolio	5,294
Waddell & Reed New Concepts Fund	4,403
Waddell & Reed Science and Technology Fund	108,135
Waddell & Reed Small Cap Fund	1,747
Total Listed Securities	<u>\$ 1,024,077</u>

Real Estate Owned

Personal residence	\$ 475,000
Rental property #1	168,000
Rental property #2	160,000
Rental property #3	185,000
Total Real Estate Owned	<u>\$ 988,000</u>

AFFIDAVIT

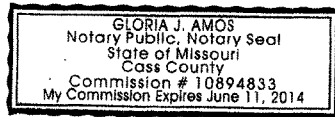
I, Stephen Roger Bought, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

1/17/14

(DATE)

SB

(NAME)

Gloria J. Amos

(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Armando Omar Bonilla
2. **Position**: State the position for which you have been nominated.

Judge, United States Court of Federal Claims
3. **Address**: List current office address. If city and state of residence differs from your place of employment, lease list the city and state where you currently reside.

United States Department of Justice
Office of the Deputy Attorney General
950 Pennsylvania Avenue, NW, 4th Floor
Washington, District of Columbia 20530
4. **Birthplace**: State year and place of birth.

1967; New York, New York
5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1989 – 1992, Seton Hall University School of Law; J.D. (*magna cum laude*), 1992

Summer 1989, Wake Forest University School of Law, Council on Legal Education
Opportunity Fellow (pre-law summer institute), no degree

1985 – 1989, West Virginia University; B.A., May 1989
6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2010 – present

United States Department of Justice
Office of the Deputy Attorney General
950 Pennsylvania Avenue, NW, 4th Floor
Washington, District of Columbia 20530
Associate Deputy Attorney General (March 2014 – present)
Senior Counsel to the Deputy Attorney General (2010 – 2014)

2002 – 2010

United States Department of Justice
Criminal Division
Public Integrity Section
Bond Building, 12th Floor
1400 New York Avenue, NW
Washington, District of Columbia 20530
Trial Attorney

2001 – 2002

United States Department of Justice
Criminal Division
Asset Forfeiture and Money Laundering Section
Bond Building, 2nd Floor
1400 New York Avenue, NW
Washington, District of Columbia 20530
Trial Attorney

1994 – 2001

United States Department of Justice
Civil Division
Commercial Litigation Branch
1100 L Street, NW, 12th Floor
Washington, District of Columbia 20530
Trial Attorney

1996 – 1998 (academic years)

The George Washington University Law School
2000 H Street, NW
Washington, District of Columbia 20052
Adjunct Professor of Law

1992 – 1994

United States District Court for the District of New Jersey
Chambers of the Honorable Garrett E. Brown, Jr.
United States District Judge
42 E. State Street

Trenton, New Jersey 08608
Law Clerk to Judge Garrett E. Brown, Jr.

1990 – 1992 (academic years)
Seton Hall University School of Law
One Newark Center
Newark, New Jersey 07102
Teaching Assistant (Contracts I & II) to Professor Susan Block-Lieb

Summer 1991
Clapp & Eisenberg, PC
One Newark Center
Newark, New Jersey 07102
Summer Associate

1989 – 1990 (summer and holiday breaks)
Wharfside-Chef's International
101 Channel Drive
Point Pleasant, New Jersey 08724
Waiter

1987 – 1989 (summer and holiday breaks)
First DeWitt Savings & Loan
1161 Burt Tavern Road
Bricktown, New Jersey 08724
Teller

Other Affiliations (uncompensated):

2001 – 2003
The Castle on Logan Circle Homeowners Association
1301 O Street, NW
Washington, District of Columbia 20005
President

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the United States military. I timely registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Attorney General's Award for Distinguished Service (2011)
 Special Commendation, United States Department of State, Office of the
 Inspector General, Office of Investigation (2009)
 Assistant Attorney General's Award (Criminal Division) for Ensuring the Integrity
 of Government (2006 & 2008)
 Special Commendation Award, Civil Division, United States Department of Justice
 (2000)
 Federal Bar Association Younger Federal Lawyers Award (1999)
 Letters of Commendation for Extraordinary Trial Work from Attorney General
 Janet Reno and FBI Director Louis J. Freeh (1998)
 Letter of Commendation for Extraordinary Litigation Skills, United States Air Force
 (1998)
 Attorney General's Honors Program (1994)
 Graduated *magna cum laude* from Seton Hall University School of Law (1992)
 Editor-in-Chief, Seton Hall Constitutional Law Journal (1991 – 1992)
 Seton Hall Interscholar Appellate Moot Court Competition, Winning Team, Best Oralist
 and Best Brief (1991)
 Council on Legal Education Opportunity Fellow (Summer 1989)
 West Virginia University Greek Man of the Year (1989)
 West Virginia University "Mr. Mountaineer," Second Place (award based on academic
 achievement and extracurricular involvement) (1989)
 Pi Kappa Phi Fraternity National Student of the Year, Third Place (1988)
 West Virginia University Mountain Honorary (top 25 student leaders) (1987 – 1989)
 Eagle Scout, Boy Scouts of America (1985)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Attorney General's Honors Program Hiring Committee (2009 – present)
 Barrister, Edward Bennett Williams Inn of Court (2011 – present)
 Department of Homeland Security Maritime Migration Senior Oversight Group
 (2010 – present)
 Department of Justice (Criminal Division) Diversity Committee (2010)
 Department of Justice Investment Review Board (2010 – 2012)
 Department of Justice Law Enforcement Operations Chiefs Working Group (2014)
 Department of Justice Priority Goal: Violent Crime (December 2013 – February 2014)
 Team Leader
 Department of Justice Prison Rape Elimination Act Working Group (2014)
 Federal Interagency Drug Endangered Children Task Force (2011 – 2012)
 Government Accountability Office Audit Liaison (2010 – present)
 Health Care Fraud Prevention and Enforcement Action Team (2010 – 2011)
 Hispanic Bar Association of the District of Columbia (2011 – present)
 Endorsements Committee Member (2013 – present)
 Hispanic National Bar Association (2013 – present)

Identity Theft Steering Committee – implementing the recommendations of the
2008 President’s Identity Theft Task Force Report (2010 – present)
International Criminal Police Organization (INTERPOL) Evolving Fund Working Group
(2012 – 2013)
Justice Prisoner and Alien Transportation System Executive Committee (2010 – present)
National Commission on Forensic Science (2013)
President’s Task Force on Puerto Rico (2012 – present)
Protective Services Working Group (2010 – 2012)
Seton Hall University School of Law Class of 1992 Reunion Committee (2007 & 2012)
United States Court of Federal Claims Bar Association (1994 – 2001, 2013 – present)
White House Public Safety Working Group (2010 – 2011)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership.
Please explain the reason for any lapse in membership.

New Jersey, 1992
District of Columbia, 2011

In addition, although I was notified by the Pennsylvania Board of Bar Examiners that I passed the July 1992 Pennsylvania bar examination on November 13, 1992, I never submitted the paperwork to be officially sworn in as a member of that bar. There have been no lapses in my New Jersey or District of Columbia bar memberships.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2007
United States Court of Appeals for the First Circuit, 2003
United States Court of Appeals for the Third Circuit, 2006
United States Court of Appeals for the Fifth Circuit, 2003
United States Court of Appeals for the Federal Circuit, 1994
United States District Court for the Northern District of Georgia, 2006
United States District Court for the District of Nevada, 2005
United States District Court for the District of Puerto Rico, 2003
United States District Court for the District of the Virgin Islands, 2003
United States Court of Federal Claims, 1994

To the best of my knowledge and belief, there have been no lapses in my membership in any of these courts.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Holy Trinity School Fathers' Club (2010 – present)
The Castle on Logan Circle Homeowners Association (2001 – 2003)
President

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, and letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

With James M. Kinella, "Military Pay," in *The United States Court of Federal Claims: A Deskbook for Practitioners* (4th ed. Apr. 1998). Copy supplied.

Municipal Noise Ordinance Imposing Mandatory Adherence to Sound Amplification Guidelines Constitutes a Valid Time, Place, and Manner Restriction on Protected Speech, 1 SETON HALL CONST. L.J. 451 (1991). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the

organization that issued it, the date of the document, and a summary of its subject matter.

I served as the interim Team Leader of the Violent Crime Agency Priority Goal from December 2013 to February 2014 during the transition between two permanent Team Leaders. In this role, I did not draft any publications, but I did approve two website pages. I have listed those below:

Team Leader, Department of Justice Priority Goal: Violent Crime (FY 2015) ("Goal Overview" and "Performance Indicators"), available at <http://www.performance.gov/content/violent-crime-0#overview> and <http://www.performance.gov/content/violent-crime-0#indicators>.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

United States Department of Justice Statement Regarding Inspector General Report on the Handling of Former Known or Suspected Terrorists Admitted into the Federal Witness Security Program (May 16, 2013). Copy supplied.

Public Summary: Department of Justice's Response to the Office of the Inspector General's Draft Interim Audit Report entitled *Department of Justice's Handling of Known or Suspected Terrorists Admitted into the Federal Witness Security Program* (Apr. 19, 2013) (document dated May 6, 2013; publicly released on May 16, 2013). Copy supplied.

United States Department of Justice's Scientific and Research Integrity Policy (draft published Apr. 3, 2012; final published Aug. 1, 2013). Copies supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Feb. 25, 2014: Guest Speaker, "Law and Lawyering in DC," University of California-Washington Center, Washington, DC. My remarks and responses to questions posed by third-year law students during a round-table discussion focused on legal policymaking and my career in public service. I have no notes, transcript, or recording. The University

of California-Washington Center is located at 1608 Rhode Island Avenue, NW, Washington, DC 20036.

Apr. 18, 2013: Panelist, "Representing Clients before Congress," Edward Bennett Williams Inn of Court, Washington, DC. My remarks and responses to questions focused on investigating and prosecuting individuals who provide false testimony before Congress or obstruct Congressional proceedings. I have no notes, transcript, or recording. The Edward Bennett Williams Inn of Court is located at United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001.

Apr. 13, 2011: Keynote Speaker, Samuel J. Heyman Public Service Lecture, Seton Hall University School of Law, Newark, NJ. My remarks and responses to questions focused on my career in public service. I have no notes, transcript, or recording, but press coverage is supplied. Seton Hall University is located at One Newark Center, Newark, NJ 07102.

Oct. 27, 1999: Speaker, "From *Haggar* to *Hitachi* – Customs at the Crossroads," Customs Lawyers Association Seventh Annual Conference on Recent Trends in Customs Law, Washington, DC. Copy of the paper I prepared for the conference, which served as the basis for my remarks and responses to questions, supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Charlie Savage, "Justice Dept. Lost Track of Terrorists, Report Says," New York Times, May 16, 2013. Copy supplied.

Throughout my career with the Department of Justice, both in the Civil and Criminal Divisions, I drafted a number of press releases issued by the Department's Office of Public Affairs in connection with the civil cases I litigated, the criminal cases I prosecuted, and the appellate cases I argued. I have provided all of those that I could locate, which also should be available at <http://www.justice.gov/opa/pr/2014/May/>, although it is possible that I may have missed some:

Press Release, *More Than \$40 Million Worth of Gold, Silver and Jewelry Forfeited in International Money Laundering Case: Ten Tons of Assets Forfeited in Black Market Peso Exchange Investigation*, U.S. Department of Justice, Apr. 12, 2010. Copy supplied.

Press Release, *Former Department of Labor Chief of Staff Pleads Guilty for Failing to Report Gifts from Former Lobbyist Jack Abramoff*, U.S. Department of Justice Federal Bureau of Investigation, April 7, 2010. Copy supplied.

Press Release, *Former Congressional Chief of Staff Sentenced for Honest Services Fraud Conspiracy*, U.S. Department of Justice, July 30, 2009. Copy supplied.

Press Release, *Fourth Person Pleads Guilty to Illegally Accessing Confidential Passport Files*, U.S. Department of Justice, July 10, 2009. Copy supplied.

Press Release, *Former Social Worker Sentenced for Role in Scheme to Defraud Department of Veterans Affairs and Obstructing Justice*, U.S. Department of Justice, June 29, 2009. Copy supplied.

Press Release, *Former State Department Employee Sentenced for Illegally Accessing Confidential Passport Files*, U.S. Department of Justice, March 23, 2009. Copy supplied.

Press Release, *Third Individual Pleads Guilty to Illegally Accessing Confidential Passport Files*, U.S. Department of Justice, January 27, 2009. Copy supplied.

Press Release, *Two Virgin Islands Commissioners Sentenced in \$1.4 Million Bribery and Kickback Scheme*, U.S. Department of Justice, August 14, 2008. Copy supplied.

Press Release, *Two Virgin Islands Commissioners Convicted in \$1.4 Million Bribery and Kickback Scheme*, U.S. Department of Justice, February 8, 2008. Copy supplied.

Press Release, *Former Congressional Chief of Staff Pleads Guilty to Honest Services Fraud Conspiracy*, U.S. Department of Justice, December 7, 2007. Copy supplied.

Press Release, *Former Government Official Sentenced in \$1.4 Million Virgin Islands Bribery Scandal*, U.S. Department of Justice, May 3, 2007. Copy supplied.

Press Release, *Former Government Official Is Third to Plead Guilty in \$1.4 Million Virgin Islands Bribery Scandal*, U.S. Department of Justice, September 26, 2006. Copy supplied.

Press Release, *Two Plead Guilty In \$1.4 Million Virgin Islands Bribery Scandal*, U.S. Department of Justice, July 12, 2006. Copy supplied.

Press Release, *Former Justice Department Attorney Pleads Guilty to Criminal Conflict of Interest Charge*, U.S. Department of Justice, June 14, 2006. Copy supplied.

Press Release, *Chinese National Pleads Guilty to Fraudulently Obtaining U.S. Citizenship: Defendant Agrees To Cooperate In Ongoing Investigation Into \$500 Million Bank Of China Embezzlement*, U.S. Department of Justice, April 26, 2005. Copy supplied.

Press Release, *Virgin Islands Senator Indicted on Fraud and Theft Charges*, U.S. Department of Justice, August 13, 2004. Copy supplied.

Press Release, *Former FBI Biologist Pleads Guilty to Filing False DNA Laboratory Reports*, U.S. Department of Justice, May 18, 2004.

Press Release, *Defendant Sentenced on Charges of Perjury, Obstruction of Investigation of Theft from San Juan Aids Institute*, U.S. Department of Justice, October 16, 2003. Copy supplied.

Alumni Profile, Seton Hall Law Magazine, Vol. 1 at 10-11 (Oct. 1999). Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
- i. Of these, approximately what percent were:
 - jury trials: ____%
 - bench trials: ____% [total 100%]
 - civil proceedings: ____%
 - criminal proceedings: ____% [total 100%]
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information or counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not

published; and (3) the names and contact information for the attorneys who played a significant role in the case.

- e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held any judicial office.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not been a member of, held office in, or rendered services to, any political party or election committee. I have not held a position or played a role in any political campaign.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1992 to 1994, I served as a law clerk to the Honorable Garrett E. Brown, Jr., United States District Judge, United States District Court for the District of New Jersey.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1994 – 2001
United States Department of Justice
Civil Division
Commercial Litigation Branch
1100 L Street, NW, 12th Floor

Washington, District of Columbia 20530
Trial Attorney

2001 – 2002
United States Department of Justice
Criminal Division
Asset Forfeiture and Money Laundering Section
Bond Building, 2nd Floor
1400 New York Avenue, NW
Washington, District of Columbia 20530
Trial Attorney

2002 – 2010
United States Department of Justice
Criminal Division
Public Integrity Section
Bond Building, 12th Floor
1400 New York Avenue, NW
Washington, District of Columbia 20530
Trial Attorney

2010 – present
United States Department of Justice
Office of the Deputy Attorney General
950 Pennsylvania Avenue, NW, 4th Floor
Washington, District of Columbia 20530
Associate Deputy Attorney General (March 2014 – present)
Senior Counsel to the Deputy Attorney General (2010 – 2014)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or an arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Following my clerkship, I have devoted my entire 20 years of legal practice to public service at the United States Department of Justice. I have served as a civil litigator, a criminal prosecutor, an appellate advocate, and a manager and senior policy advisor.

From 1994 to 2001, I served as a Trial Attorney in the Civil Division's Commercial Litigation Branch. During my time in the Civil Division, I litigated over 100 cases before the United States Court of Federal Claims, and I briefed and argued over 50 appeals before the United States Court of Appeals for the Federal Circuit. The cases I handled involved civil lawsuits filed against the United States and its agencies and instrumentalities. The cases centered on government contracts, military pay, civilian personnel law, veterans' benefits, international trade, and constitutional, statutory and regulatory challenges to federal agency actions. I also filed and litigated fraud counterclaims and special pleas in fraud.

From August 2001 to July 2010, I served as a Trial Attorney in the Criminal Division, first in the Asset Forfeiture and Money Laundering Section (August 2001 to July 2002) and then the Public Integrity Section (2002 to 2010). During my time in the Criminal Division, I directed over 50 criminal investigations and led prosecutions involving money laundering, public corruption, and fraud. The criminal charges I prosecuted involved: bribery and kickbacks; honest services mail and wire fraud; theft of federal funds; conspiracy; conflict-of-interest; obstruction of justice; perjury; making false statements; tax evasion; money laundering; structuring currency transactions; and unauthorized computer access. I also litigated criminal forfeiture issues and petitions for writs of habeas corpus and briefed and argued appeals. I appeared before federal courts across the country, worked with and supervised attorneys and law enforcement agents nationwide, and worked with foreign governments in joint investigations.

In 2010, I was asked to join the Office of the Deputy Attorney General as a Senior Counsel to the Deputy Attorney General. In March 2014, I was promoted to Associate Deputy Attorney General. Since joining the Office of the Deputy Attorney General, my in-court experience has been limited to handling the post-conviction proceedings in two cases I prosecuted during my tenure in the Criminal Division. My primary responsibilities in the Office of the Deputy Attorney General have included: advising the Deputy Attorney General on a range of legal, legislative, and policy issues relating to criminal justice, law enforcement, firearms, and forensic science; providing leadership and oversight to, among other components, the United States Marshals Service, INTERPOL Washington, the United States Parole Commission, and the Access to Justice Initiative; chairing and serving on a number of intra- and interagency task forces and working groups; and briefing members of Congress and their staffs.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As an attorney for the Department of Justice for two decades – as a civil litigator, a criminal prosecutor, an appellate advocate, and a manager and senior policy advisor – my client has been, broadly speaking, the United States.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

From 1994 through 2010, my practice was exclusively in litigation and my court appearances were frequent. Since joining the Office of the Deputy Attorney General in 2010, my practice has focused on management, oversight, policy, and legislative matters and my court appearances have been infrequent.

- i. Indicate the percentage of your practice in:

1. federal courts:	99%
2. state courts of record:	0%
3. other courts:	0%
4. administrative agencies:	1%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	50%
2. criminal proceedings:	50%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Between 1994 and 2001, while in the Civil Division, I tried eight cases to judgment, all as lead counsel for the United States. During that time, I also litigated a significant number of cases to final judgment as lead counsel for the United States, through the filing and arguing of dispositive motions. From 2001 through 2010, while in the Criminal Division, I tried five cases to verdict, four as lead counsel for the United States and one as second chair. During that time, I also negotiated dozens of guilty pleas as lead counsel for the United States.

- i. What percentage of these trials were:

1. jury:	40%
2. non-jury:	60%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any

oral argument transcripts before the Supreme Court in connection with your practice.

I have not been counsel of record or personally argued any case before the Supreme Court of the United States. I have participated in drafting five briefs in opposition to petitions for writs of certiorari handled by the Office of the Solicitor General:

Griffin v. Secretary of Veterans Affairs, 537 U.S. 947 (2002) (brief in opposition, 2002 WL 32135715) (cert. denied)

Small v. United States and *Neptune v. United States*, 528 U.S. 821 (1999) (consolidated brief in opposition, 1999 WL 33641058) (cert. denied)

Porter v. United States, 528 U.S. 809 (1999) (brief in opposition, 1999 WL 33641211) (cert. denied)

Bestfoods v. United States, 528 U.S. 810 (1999) (brief in opposition, 1999 WL 33641299) (cert. denied)

Routen v. West, 525 U.S. 962 (1998) (brief in opposition, copy supplied) (cert. denied)

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Griles*, No. 1:07-cr-079 (D.D.C.) (Judge Huvelle).

Between 2006 and 2007, while in the Criminal Division's Public Integrity Section, I served as lead counsel for the United States in the criminal investigation and prosecution of Mr. Griles, the former Deputy Secretary of the United States Department of the Interior, who was involved in illicit dealings with former lobbyist Mr. Abramoff. On March 23, 2007, Mr. Griles pleaded guilty in the United States District Court for the District of Columbia to obstructing a United States Senate investigation into the Abramoff lobbying scandal. The former Deputy Secretary was sentenced to ten months in prison, followed by three years of supervised release, ordered to perform 100 hours of community service, and fined \$30,000.

As lead counsel, I led the criminal investigation, conducted grand jury proceedings, engaged in plea negotiations, represented the United States during the plea hearing, prepared the United States' sentencing memoranda, and presented oral argument at the sentencing hearing. For my handling of the *Griles* case and other Abramoff-related matters, I received the Attorney General's Award for Distinguished Service in September 2011.

Co-counsel in *Griles*: Kartik K. Raman, currently an Assistant United States Attorney in the United States Attorney's Office for the Northern District of Illinois, 219 S. Dearborn Street, 5th Floor, Chicago, IL 60604 (312.469.6026).

Opposing counsel in *Griles*: Barry M. Hartman of K&L Gates LLP, 1601 K Street, NW, Washington, DC 20006 (202.778.9338), and Brian W. Stolarz currently with Jackson Kelly, PLLC, 1875 Connecticut Avenue, NW, Suite 1110, Washington, DC 20009 (202.973.0204).

2. *GBQC Architects v. United States*, No. 98-399C (Fed. Cl.) (Judge Miller).

Between April 1998 and September 1999, while in the Civil Division, I served as lead counsel for the United States and the Smithsonian Institution in a lawsuit filed in the United States Court of Federal Claims by the architecture firm hired to design the National Museum of the American Indian on the National Mall in Washington, DC. The architecture firm was challenging its termination for default and seeking reinstatement and \$2 million in damages. In exchange for converting the termination for default into a termination for convenience, the architecture firm voluntarily dismissed its complaint and agreed to pay nearly \$500,000 to the Smithsonian Institution in re-procurement costs. On September 28, 1999 – the day the lawsuit was dismissed – the formal groundbreaking ceremony for the National Museum of the American Indian was held on the National Mall.

As lead counsel, I briefed and argued a motion for partial dismissal, proposed a government counterclaim, conducted discovery, and represented the government in mediation conducted by the presiding judge.

Agency Counsel: James I. Wilson, Assistant General Counsel, Smithsonian Institution, 1000 Jefferson Drive, SW, Room SI-302/MRC 012, Washington, DC 20560 (202.357.2583).

Opposing counsel: Terrence M. McShane of Lee & McShane, PC, 1211 Connecticut Avenue, NW, Suite 425, Washington, DC 20036 (202.530.8102).

3. *United States v. Plaskett*, Crim. No. 2007-60, 2008 WL 3833838 (D.V.I. Aug. 13, 2008) (Chief Judge Gomez), *aff'd*, 355 Fed. Appx. 639, 2009 WL 4643819 (3d Cir. Dec. 2, 2009) (Circuit Judges McKee, Fuentes, and Nygaard), *cert. denied*, 130 S. Ct. 3398 and 131 S. Ct. 614 (2010).

Between 2007 and 2012, while in the Criminal Division's Public Integrity Section and then the Office of the Deputy Attorney General, I served as lead counsel for the United States and the

government of the United States Virgin Islands in the criminal investigations and prosecutions of a number of high-ranking Virgin Islands government officials and businessmen. Specifically, the defendants were involved in a \$1.4 million government contract bribery and kickback scheme and a subsequent scheme to obstruct a joint federal and local task force investigation and a grand jury investigation. Prior to trial, four defendants pleaded guilty. In February 2008, following a three-week jury trial in the United States District Court of the Virgin Islands, two members of the governor's cabinet were convicted on bribery and obstruction of justice charges. The defendants were sentenced to prison terms of nine years and seven years and ordered to pay over \$1 million in restitution. The United States Court of Appeals for the Third Circuit affirmed the convictions and sentences. The United States Supreme Court denied the petitions for writs of certiorari.

As lead counsel, I directed the criminal investigations, conducted grand jury proceedings, engaged in plea negotiations, represented the United States during the plea hearings, drafted and argued pre- and post-trial motions, first-chaired the trial, prepared the United States' sentencing memoranda, presented oral argument at the sentencing hearings, drafted the United States' consolidated appellate brief to the Third Circuit (decided without oral argument), drafted the United States' responses to the petitions for habeas corpus relief, and first-chaired the habeas corpus hearing. In November 2008, my trial team received the Assistant Attorney General's Award (Criminal Division) for Ensuring the Integrity of Government.

Co-counsel: Michael Ferrara, currently an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York, 1 St. Andrews Plaza, New York, NY 10007 (212.637.2526); Peter M. Koski, currently a Deputy Chief of the Public Integrity Section, Criminal Division, U.S. Department of Justice, 1400 New York Avenue, NW, Washington, DC 20530 (202.307.3589); and John P. Pearson, currently an Assistant United States Attorney in the United States Attorney's Office for the Southern District of Texas, 1000 Louisiana Street, Suite 2300, Houston, TX 77002 (713.567.9342).

Opposing counsel: Gordon C. Rhea of Richardson, Patrick, Westbrook & Brickman LLC, 1037 Chuck Dawley Blvd., Building A, Mount Pleasant, SC 29464 (843.727.6656) (defendant Plaskett); Treston E. Moore of Moore, Dodson & Russell, PC, 5035 (14A) Norre Gade, Suite 1, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804 (340.777.5490) (defendant Biggs); Charles J. Grant of Grant & Lebowitz, LLC, 1515 Market Street, Suite 705, Philadelphia, PA 19102 (215.789.3100) (defendant Marchena); Jeffrey L. Ertel, currently with the Georgia Indigent Defense Council, 985 Ponce De Leon Avenue, Atlanta, GA 30306 (404.894.2595) (defendant Griffin); Francis E. Jackson of The Law Center, Windward Passage, P.O. Box 6591, St. Thomas, U.S. Virgin Islands 00802 (340.776.1577) (defendant Blyden); Arturo R. Watlington, Jr., Esq., #3 Store Gronne Gade, St. Thomas, U.S. Virgin Islands 00804 (340.774.9697) (defendant Modeste); and Clive Rivers, Esq., Nisky Center, Suite 233, Veterans Drive, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804 (340.776.4666) (defendant Brewley).

4. *Bestfoods v. United States*, 165 F.3d 1371 (Fed. Cir.) (Circuit Judges Newman, Schall, and Bryson), *cert. denied*, 528 U.S. 810 (1999); *Bestfoods v. United States*, 260 F.3d 1320 (Fed. Cir.

2001) (Circuit Judges Newman and Bryson and Senior Circuit Judge Archer).

Between 1998 and 2001, while in the Civil Division, I served as lead counsel for the United States and the Department of the Treasury in two affirmative appeals from the United States Court of International Trade to the United States Court of Appeals for the Federal Circuit. Both appeals involved the authority vested in the Secretary of the Treasury to implement and administer the 1994 North American Free Trade Agreement (NAFTA) as it pertained to the country of origin marking requirements of the Tariff Act of 1930. In the first appeal, the Federal Circuit held that the Secretary of the Treasury acted lawfully in promulgating regulations applying a rule-oriented tariff-shift method (rather than the traditional case-by-case adjudicatory approach) to determine whether goods imported from NAFTA countries are “substantially transformed” in the United States and, thus, exempted from the country of origin marking requirements of the Tariff Act of 1930. The United States Supreme Court denied the petition for a writ of certiorari. *Bestfoods v. United States*, 165 F.3d 1371 (Fed. Cir.) (Circuit Judges Newman, Schall, and Bryson), *cert. denied*, 528 U.S. 810 (1999). In the second appeal, following the remand, the Federal Circuit held that the Secretary of the Treasury acted lawfully in withholding a de minimis exception under the federal marking statute for most agricultural products. *Bestfoods v. United States*, 260 F.3d 1320 (Fed. Cir. 2001) (Circuit Judges Newman and Bryson and Senior Circuit Judge Archer).

As lead counsel, I drafted the government’s appellate briefs, argued both appeals before the Federal Circuit, and prepared the draft brief in opposition to the petition for a writ of certiorari for the Office of the Solicitor General. Because of my work on this case, I was invited to speak at the Seventh Annual Conference on Recent Trends in Customs Law, “From *Haggar* to *Hitachi*, Customs at the Crossroads,” presented by the Customs Lawyers Association (Oct. 1999).

Agency Counsel: Louis W. Brenner, Jr., Attorney, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 2000, Washington, DC 20530 (202.622.1941); and Monika R. Brenner, Attorney Advisor, United States Customs Service, Office of Regulations & Rules, 1300 Pennsylvania Avenue, NW, Ronald Reagan Building, 3rd Floor, Washington, DC 20229 (202.927.1254).

Opposing counsel: John M. Peterson of Neville Peterson LLP, 17 State Street, Suite 1900, New York, NY 10004 (212.635.2730).

5. *AU Duong Quy (a/k/a “Lost Army Commandos”) v. United States*, No. 95-309C (Fed. Cl.) (Judge Margolis); *Mattes v. Witschonke*, Civ. No. 98-1907-SH (S.D. Fla. Nov. 4, 1998) (Judge Highsmith), *rev’d Mattes v. Chairman, Vietnamese Commandos Compensation Comm’n*, 173 F.3d 817 (11th Cir. 1999) (*per curiam*) (Circuit Judge Marcus, Senior Circuit Judge Hill, and District Judge Adams).

Between 1997 and 2000, while in the Civil Division, I served as lead counsel for the United States and the United States Department of Defense in a breach of contract action filed in the United States Court of Federal Claims by nearly 300 individuals identified as the “Lost Army Commandos.” The complaint alleged that the Central Intelligence Agency had

agreed to pay each plaintiff, South Vietnamese nationals, \$2,000 per year to conduct covert intelligence missions deep inside North Vietnam in the 1950s and 1960s. The plaintiffs were purportedly captured and interned for up to 25 years by the government of North Korea and, under the terms of the alleged covert contract, sought \$50,000 each in damages. While this action was pending, Congress passed the Commandos Compensation Act of 1996, Pub. L. No. 104-201 § 657, 110 Stat. 2422, 2584 (1996), which, among other things: established the Vietnamese Commandos Compensation Commission within the Department of Defense to adjudicate and remit payment to legitimate claims submitted within an eighteen month period; statutorily capped attorney fees at 10%; and precluded judicial review of any decision rendered by the Commission. In February 2000, upon the government's motion and demonstration that the Vietnamese Commandos Compensation Commission had been established and was timely processing claims, the Court of Federal Claims dismissed the action with prejudice.

In the interim, in March 1998, the Department of Defense was notified by the Federal Bureau of Investigation that an attorney representing the majority of the Vietnamese claimants was retaining attorney fees well in excess of the statutory cap imposed by Congress. When efforts to resolve the issue failed, the United States notified the attorney that the Commission would begin to remit payments directly to his clients. The attorney filed suit in the United States District Court for the Southern District of Florida seeking declaratory judgment as to the appropriateness of his attorney fees and a writ of mandamus to prevent the Commission from disbursing funds to his clients directly. Following an expedited bench trial conducted in October 1998, the district court granted the attorney's requests for relief, concluding that the Act did not preclude such pre-existing fee arrangements. On the government's appeal, the United States Court of Appeals for the Eleventh Circuit held that the district court erred in exercising jurisdiction over the matter in contrast to Congress' express "No Right to Judicial Review" provision in the Commandos Compensation Act. The Eleventh Circuit remanded the case with instructions to vacate all orders entered.

As lead counsel for the United States in the litigation filed in both the Court of Federal Claims and the Southern District of Florida, I drafted the government's pleadings, motions, and pre- and post-trial briefs; presented oral argument before both trial courts; counseled the Vietnamese Commandos Compensation Commission; first-chaired the district court trial; and assisted in drafting the government's appellate brief filed in the Eleventh Circuit.

Agency Counsel: J. Bradford Wiegmann, currently a Deputy Assistant Attorney General, National Security Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, 7th Floor, Washington, DC 20530 (202.514.1057).

Civil Division Appellate Section Attorney who argued the Eleventh Circuit Appeal: Thomas M. Bondy, currently a Deputy Assistant Director, Office of the General Counsel, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW, Washington, DC 20535 (202.324.3870).

Opposing Counsel: John C. Mattes, 1401 Bricknell Avenue, Suite 800, Miami, Florida 33131 (305.448.3377); David K. Tucker of Tucker & Kotler, PA, 2151 LeJeune Road, Suite 300,

Coral Gables, Florida 33134 (305.461-3627); and Scott A. Eash, currently a Professor of Law at Concord Law School, 10866 Wilshire Boulevard, Suite 1200, Los Angeles, CA 90024 (800.439.4794).

6. *Griffin v. Secretary of Veterans Affairs*, 288 F.3d 1309 (Fed. Cir.) (Circuit Judges Clevenger and Dyk and Senior Circuit Judge Archer), *cert. denied*, 537 U.S. 947 (2002).

Between 2001 and 2002, while in the Civil Division and then the Criminal Division's Asset Forfeiture and Money Laundering Section, I served as lead counsel for the United States and the Department of Veterans Affairs (VA) in a First Amendment facial challenge to a VA regulation governing the display of flags in 119 national veterans' cemeteries. In a lawsuit filed in the United States Court of Appeals for the Federal Circuit, the Sons of Confederate Veterans organization challenged the VA's denial of their request to amend or waive the regulation to permit the daily display of a large Confederate flag at a national cemetery where the remains of Confederate soldiers were buried. Under the VA regulation, the Confederate flag can be flown in national veterans cemeteries on Memorial Day and Confederate Memorial Day (in states where that holiday is observed) and to mark individual gravesites. The VA regulation states that only the American flag and the National League of Families POW/MIA flag may be on permanent display. The Federal Circuit held that the VA regulation does not violate the First Amendment on its face, notwithstanding the discretion vested in government officials to grant or deny exceptions to the regulation. The United States Supreme Court denied the petition for a writ of certiorari.

As lead counsel, I drafted the government's appellate brief and argued the case before the Federal Circuit.

Agency counsel: Deputy Assistant General Counsel Richard J. Hipolit and Staff Attorney Martin Sendek of the U.S. Department of Veteran Affairs Office of General Counsel, 810 Vermont Avenue, NW, Washington, DC 20420 (202.273.6325).

Opposing counsel: Michael F. Wright, currently of Steptoe & Johnson LLP, 2121 Avenue of the Stars, Suite 2800, Los Angeles, CA 90067 (310.734.3268).

7. *United States v. Janowsky*, 133 F.3d 888 (Fed. Cir. 1998) (Chief Judge Mayer, Senior Circuit Judge Archer, and Circuit Judge Lourie); *United States v. Janowsky*, No. 90-3846C (Fed. Cl. Aug. 25, 1998) (Judge Turner).

Between 1997 and 1998, while in the Civil Division, I served as lead counsel for the United States and the Federal Bureau of Investigation (FBI) in a decade-old, multi-million dollar breach of contract and Fifth Amendment Takings Clause lawsuit filed in the Court of Federal Claims by a former cooperative witness and his wife. In exchange for their cooperation and the use of their business in a public corruption and organized crime investigation, the plaintiffs alleged that the FBI agreed to purchase or at least guarantee the sale of their business. The plaintiffs argued in the alternative that the FBI effectively took their business without just compensation. The Court of Federal Claims twice dismissed the complaint on the government's filing of successive

dispositive motions. Following the second reversal, the case was remanded for trial. At the conclusion of the bench trial, the Court of Federal Claims granted the United States' motion for a directed verdict and awarded costs to the government. A third appeal was not filed.

As lead counsel, I argued the second appeal before the Federal Circuit and first-chaired the trial. For my handling of the *Janowsky* case, I received letters of commendation from FBI Director Louis J. Freeh and Attorney General Janet Reno in October and December 1998, respectively.

Agency counsel in *Janowsky*: M. Sean O'Neill, currently an Attorney Advisor in the Office of the Inspector General, U.S. Department of Justice, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20530 (202.514.9539).

Opposing counsel in *Janowsky*: David E. Vandercoy, currently a Professor at Valparaiso University School of Law, 656 S. Greenwich Street, Valparaiso, IN 46383 (219.465.7865).

8. *Small v. United States*, 36 Fed. Cl. 43 (1996), *as amended*, 37 Fed. Cl. 149 (1997) (Judge Wiese), *aff'd*, 158 F.3d 576 (Fed. Cir. 1998), *as amended*, 180 F.3d 1343 (Fed. Cir.) (Circuit Judges Plager, Clevenger, and Gajarsa), *cert. denied*, 528 U.S. 821 (1999).

Between 1995 and 1999, while in the Civil Division, I served as lead counsel for the United States and the United States Air Force in a series of cases filed in the United States Court of Federal Claims and the United States District Court for the District of Columbia. The lead case was *Small v. United States*. In these cases, retired officers challenged, among other things, the Air Force's statutory and regulatory authority to use review panels in conducting officer promotion boards. Following contrary opinions simultaneously-issued by the Court of Federal Claims, the United States Court of Appeals for the Federal Circuit affirmed the Air Force's long-standing practice. The United States Supreme Court denied the petitions for writs of certiorari.

As lead counsel in these cases, I conducted discovery, briefed and argued cross-motions for summary judgment, briefed and argued the appeals before the Federal Circuit, and prepared the draft consolidated brief in opposition to the petitions for writs of certiorari for the Office of the Solicitor General. For my work on these cases, I received a Letter of Commendation from the Air Force in 1998 and a Civil Division Special Commendation Award in March 2000.

Agency counsel in *Small*: Lt. Col. Ralph A. Bauer (USAF-ret.), currently with International Launch Services, 1875 Explorer Street – Suite 700, Reston, VA 20190 (571.633.7400).

Opposing counsel in *Small*: Guy J. Ferrante of King & Everhard, P.C., 8019 Daffodil Court, Springfield, VA 22152 (703.644.2009).

9. *Vereda, Ltda. v. United States*, 41 Fed. Cl. 495 (1998), *vacated in part*, 46 Fed. Cl. 12 (1999), *amended*, 46 Fed. Cl. 569 (2000) (Judge Smith), *pet'n for interlocutory appeal granted*, 250 F.3d 2000 (Fed. Cir. 2000) (table) (Circuit Judges Rader, Gajarsa, and Linn), *rev'd*, 271 F.3d 1367 (Fed. Cir. 2001) (Circuit Judges Clevenger, Schall, and Dyk).

Between 1998 and 2001, while in the Civil Division and then the Criminal Division's Asset Forfeiture and Money Laundering Section, I served as lead counsel for the United States and the Drug Enforcement Administration (DEA) in a case filed in the United States Court of Federal Claims involving the criminal seizure and administrative forfeiture of an airplane used in narcotics trafficking. Seeking to collaterally challenge the actions taken by the DEA and to recover money damages, the mortgagee of the aircraft, who claimed an innocent ownership interest, asserted that the forfeiture amounted to an illegal exaction, a taking of property without just compensation in violation of the Fifth Amendment, and an excessive fine in violation of the Eighth Amendment. The Court of Federal Claims twice granted-in-part and denied-in part the government's motions to dismiss, holding that the court had jurisdiction to consider the merits of the Takings Clause claim. After granting the government's petition for an interlocutory appeal, the United States Court of Appeals for the Federal Circuit reversed the trial court's jurisdictional ruling and remanded the case with instructions to enter judgment in favor of the United States.

As lead counsel, I drafted and filed with the Court of Federal Claims the government's motion for reconsideration, as well as the motion to certify the jurisdictional issue for interlocutory appeal and to stay further proceedings. I also drafted and filed with the Federal Circuit the government's petition for interlocutory appeal and, once granted, the government's merits briefs. I argued the appeal before the Federal Circuit.

Agency counsel: John Hieronymus, currently with Madison Associates, Inc., P.O. Box 2627, Leesburg, VA 20177 (703.777.6617).

Opposing Counsel: Mark L. Whitaker, currently with Baker Botts, The Warner, 1299 Pennsylvania Avenue, NW, Washington, DC 20004 (202.639.7785).

10. *United States v. Speed Joyeros, S.A.*, No. 00-CR-960-JBW (E.D.N.Y.) (Judge Weinstein).

Between 2001 and 2002, while in the Criminal Division's Asset Forfeiture and Money Laundering Section, I served on the prosecution team that led to the first United States indictment and convictions of offshore businesses engaged in the illicit black-market peso exchange – a money laundering operation through which narcotics proceeds generated in the United States were exchanged for Colombian pesos and then used to purchase goods in the Colon Free Zone of Panama. The defendants owned and operated two wholesale jewelry businesses in Panama used by Colombian narcotics traffickers to launder United States currency. On March 20, 2002, on the eve of trial, the owner of the two businesses, Yarden Hebroni, and her two companies pleaded guilty to conspiracy to commit money laundering in the United States District Court for the Eastern District of New York. Ms. Hebroni was sentenced to 27 months in prison, followed by three years supervised release, the forfeiture of her businesses, and fined \$200,000. In total, over \$40 million in jewelry was seized by and forfeited to the United States from the Panamanian businesses.

As a member of the prosecution team, I assisted in the investigation and trial preparation, drafted pretrial motions, participated in the plea negotiations, assisted in the drafting of the government's sentencing memoranda, and participated in the sentencing hearing. *United States*

v. Hebroni, No. 02-1106, 37 Fed. Appx. 549 (2d Cir. Mar. 13, 2002) (Circuit Judges Leval, Calabresi, and Cabranes); *United States v. Speed Joyeros, S.A.*, 204 F. Supp. 2d 412 (E.D.N.Y. 2002) (Judge Weinstein).

Co-counsel: Eric Snyder, currently with Kobre & Kim LLP, 1919 M Street, NW, Washington, DC 20036 (202.664.1904); and Laurel Loomis Rimón, currently an Assistant Litigation Deputy, Office of Enforcement, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552 (202.435.7966).

Opposing counsel: Larry J. Silverman, 26 Broadway, 18th Floor, New York, NY 10004 (212.425.1616).

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In my current position, I advise the Deputy Attorney General on numerous issues, make policy judgments and recommendations, oversee certain Department components, serve on a number of Department and interagency task forces and working groups, review proposed legislation, and provide briefings to members of Congress and their staff. For example, between 2012 and 2013, I served as a United States representative on the INTERPOL Evolving Fund Working Group which explored whether the international law enforcement organization could and should accept private funding to better perform its core mission of information sharing.

I have never performed any lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

1996 – 1998: While employed by the United States Department of Justice, I served as an Adjunct Professor of Law at The George Washington University Law School. I taught legal research and writing and appellate advocacy to first-year law students. I do not have a copy of the syllabus.

20. **Deferred Income/Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Other than my participation in the Federal Government's Thrift Savings Program and the Federal Employees Retirement System, I do not have any arrangements for deferred income or future benefits from previous business relationships.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments, or agreements to pursue outside employment if confirmed.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My wife serves as an Administrative Patent Judge for the United States Patent and Trademark Office (USPTO). Although unlikely, it is possible that a patent at issue in a dispute filed in the United States Court of Federal Claims under 28 U.S.C. § 1498 could be subject to proceedings at the USPTO. If I am confirmed, and if that situation ever presents itself, either I or my wife (or both) immediately would self-recuse from the matter(s) to avoid any potential conflict of interest or appearance of impropriety. I am unaware of any other individuals, family or otherwise, that are likely to present potential conflicts of interest. If confirmed, I also would recuse myself from all cases in which I was either directly or indirectly involved during my entire tenure at the Department of Justice. For matters in which I was not involved, or handled by the Department of Justice after my departure, I would apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine whether to recuse myself from other matters.

- b. Explain how you will resolve any potential conflict of interest, including the

procedure you will follow in determining these areas of concern.

If confirmed, I would consult applicable rules, canons, and decisions addressing conflicts of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and any other materials addressing conflicts of interest and appearances of conflicts of interest. Based on that consultation, I would compile a comprehensive list of matters for easy flagging of potential conflicts of interest. In close cases, I would consult other judges and any persons designated by the court or judicial organizations to provide advice on such questions as they arise.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Because I have been in public service my entire career, my pro bono activities have been restricted. However, my tenure at the Department of Justice has afforded me a number of opportunities to serve the disadvantaged. In 2011, for example, while serving in the Office of the Deputy Attorney General, I was responsible for overseeing the final development and public roll-out of law enforcement tools designed to raise awareness, help train, and foster a coordinated response between law enforcement, first responders, medical professionals, teachers, and members of the community who come in contact with the estimated nine million children in the United States who live in households where a parent or other adult abuses, manufactures, or distributes illicit drugs.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On February 5, 2013, I submitted a letter to the White House Counsel's Office expressing my interest in serving as a judge on the United States Court of Federal Claims. In late August 2013, an official from the White House Counsel's Office contacted me to discuss my interest. Since September 4, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 12, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 21, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Bonilla, Armando O.	2. Court or Organization U.S. Court of Federal Claims	3. Date of Report 05/21/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Judge (Article I active)	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 05/21/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 04/30/2014
7. Chambers or Office Address U.S. Department of Justice Office of the Deputy Attorney General 950 Pennsylvania Ave., NW Washington, DC 20530		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ **NONE** (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ **NONE** (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. _____	_____
2. _____	_____
3. _____	_____

FINANCIAL DISCLOSURE REPORT
 Page 2 of 8

Name of Person Reporting	Date of Report
Bonilla, Armando O.	05/21/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.		
2.		
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
 Page 3 of 8

Name of Person Reporting	Date of Report
Bonilla, Armando O.	05/21/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	TADS	Tuition Agreement	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
 Page 4 of 8

Name of Person Reporting	Date of Report
Bonilla, Armando O.	05/21/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	Place "(X)" after each asset exempt from prior disclosure								
1. Justice Federal Credit Union Accounts	A	Interest	J	T	Exempt				
2. SunTrust Bank Accounts	A	Interest	J	T	Exempt				
3. TD Bank Accounts	A	Interest	J	T	Exempt				
4. Stifel Nicolaus & Co. Accounts	A	Interest	J	T	Exempt				
5. Alcoa Inc. (AA) stock	A	Dividend	J	T	Exempt				
6. Carnival Corp. (CCL) stock	A	Dividend	J	T	Exempt				
7. General Electric Co. (GE) stock	A	Dividend	J	T	Exempt				
8. Norfolk Southern Corp. (NSC) stock	A	Dividend	J	T	Exempt				
9. District of Columbia Ser A bond	A	Dividend	J	T	Exempt				
10. Miami Dade County (FL) Transit System Sales bond	B	Dividend	J	T	Exempt				
11. General Electric Cap Corp. bond	B	Dividend	K	T	Exempt				
12. Tennessee Valley Auth Power bond	B	Dividend	K	T	Exempt				
13. First Trust Dow Target unit investment trust	A	Dividend	K	T	Exempt				
14. First Trust Equity Income Select unit investment trust	A	Dividend	K	T	Exempt				
15. Invesco 1325 Alt Alloc unit investment trust	A	Dividend	K	T	Exempt				
16. Foley & Lardner LLP Cash Value Pension Plan	A	Interest	K	T	Exempt				
17. Artisan Mid Cap Value (ARTQX) mutual fund	A	Dividend	J	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less P = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Bonilla, Armando O.	05/21/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	
18. Blackrock Equity Dividend (MADVX) mutual fund	A	Dividend	K	T	Exempt					
19. American Funds Bond Fund of America (CFAAX) mutual fund	A	Dividend	J	T	Exempt					
20. American Funds Capital Income Builder (CIRAX) mutual fund	A	Dividend	J	T	Exempt					
21. Columbia Contrarian Core (SMGLX) mutual fund	A	Dividend	K	T	Exempt					
22. Dodge & Cox Intl (DODFX) mutual fund	A	Dividend	K	T	Exempt					
23. Fidelity Advisor New Insights (FINSX) mutual fund	A	Dividend	K	T	Exempt					
24. First Eagle Gold (SGGDY) mutual fund	A	Dividend	J	T	Exempt					
25. Heartland Value Plus Intl (HNVIX) mutual fund	A	Dividend	J	T	Exempt					
26. Invesco Interim Term Mun Income (VKLIX) mutual fund	A	Dividend	J	T	Exempt					
27. American Funds Investment Company of America (CICAX) mutual fund	A	Dividend	J	T	Exempt					
28. M&I Intl Growth (MQGIX) mutual fund	A	Dividend	K	T	Exempt					
29. Nationwide Geneva Mid Cap Growth (NWHYX) mutual fund	A	Dividend	J	T	Exempt					
30. American Funds New Perspective (CNPAX) mutual fund	A	Dividend	J	T	Exempt					
31. American Funds Smallcap World (CSPAX) mutual fund	A	Dividend	J	T	Exempt					
32. Oppenheimer Core Bond (OPBCX) mutual fund	A	Dividend	K	T	Exempt					
33. Oppenheimer Developing Markets (ODVYX) mutual fund	A	Dividend	K	T	Exempt					
34. Pioneer Oak Ridge Sm Cap Growth (ORIYX) mutual fund	A	Dividend	J	T	Exempt					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Bonilla, Armando O.	05/21/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
Place "X" after each asset exempt from prior disclosure									
35. Salient Midstream & Mip (SMM) mutual fund	A	Dividend	J	T	Exempt				

1. Income Code:
(See Columns B1 and D4)

2. Value Codes
(See Columns C1 and D3)

3. Value Method Codes
(See Column C2)

A = \$1,000 or less
F = \$50,001 - \$100,000
J = \$15,000 or less
N = \$250,001 - \$500,000
P3 = \$250,001 - \$500,000
Q = Appraisal
U = Book Value

B = \$1,001 - \$2,500
G = \$100,001 - \$1,000,000
K = \$15,001 - \$50,000
O = \$500,001 - \$1,000,000
R = Cost (Real Estate Only)
V = Other

C = \$2,501 - \$5,000
H1 = \$1,000,001 - \$5,000,000
L = \$50,001 - \$100,000
P1 = \$1,000,001 - \$5,000,000
P4 = More than \$50,000,000
S = Assessment
W = Estimated

D = \$5,001 - \$15,000
H2 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000
T = Cash Market

E = \$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Bonilla, Armando O.	05/21/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

Page 8 of 8

Name of Person Reporting	Date of Report
Bonilla, Armando O.	05/21/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/* Armando O. Bonilla

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		21	510	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		398	683	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		578	217
Real estate owned – personal residence	1	118	810	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		721	980				
Foley & Lardner Cash Value Pension Plan		39	787				
				Total liabilities		578	217
				Net Worth	1	797	553
Total Assets	2	375	770	Total liabilities and net worth	2	375	770
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**Listed Securities

Alcoa Inc. stock	\$ 13,660
American Funds Bond Fund of America	7,061
American Funds Capital Income Builder Fund	8,521
American Funds Investment Company of America	9,629
American Funds New Perspective Fund	9,257
American Funds SMALLCAP World Fund	9,145
Artisan Mid Cap Value Fund	11,076
BlackRock Equity Dividend Fund	16,489
Carnival Corp. stock	11,346
Columbia Contrarian Core Fund	15,235
District of Columbia municipal bond	10,459
Dodge & Cox International Stock Fund	20,165
Fidelity Advisor New Insights Fund	18,968
First Eagle Gold Fund	3,032
First Trust Dow Target UIT	26,455
First Trust Equity Income Select UIT	25,292
General Electric Co. stock	2,657
General Electric corporate bond	15,302
Heartland Value Plus Fund	5,228
Invesco Alternative Allocation Portfolio UIT	21,112
Invesco Intermediate Term Municipal Income Fund	10,354
MFS International Growth Fund	28,359
Miami-Dade County, FL Transit System Sales bond	10,439
Nationwide Geneva Mid Cap Growth Fund	10,556
Norfolk Southern Corp. stock	9,474
Oppenheimer Core Bond Fund	18,798
Oppenheimer Developing Markets Fund	16,040
Pioneer Oak Ridge Small Cap Growth Fund	6,072
Salient Midstream & MLP Fund	12,765
Tennessee Valley Authority Power bond	15,737
Total Listed Securities	<u>\$ 398,683</u>

Real Estate Mortgages Payable

Personal residence	\$ 497,149
Home equity line of credit	<u>81,068</u>
Total Real Estate Mortgages	<u>\$ 578,217</u>

AFFIDAVIT

I, Armando Omar Borilla, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

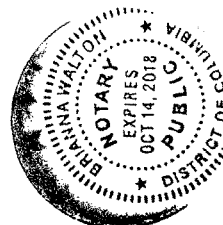
05-22-2014
(DATE)

[Signature]
(NAME)

[Signature]
(NOTARY)

District of Columbia: SS

Subscribed and sworn to before me, in my presence,
this 22nd day of May, 20 14
by Armando Omar Borilla
Brian Walton Notary Public
My Commission Expires 10/14/2018



UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Wendy Beetlestone

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Eastern District of Pennsylvania

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Hangley Aronchick Segal Pudlin & Schiller
One Logan Square, 27th Floor
Philadelphia, Pennsylvania 19103

4. **Birthplace:** State year and place of birth.

1961; Ibadan, Nigeria

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1990 – 1993, University of Pennsylvania Law School; J.D., 1993
1980 – 1984, Liverpool University (UK); B.A. (with honors), 1984

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2005 – present
Hangley Aronchick Segal Pudlin & Schiller
One Logan Square, 27th Floor
Philadelphia, Pennsylvania 19103
Shareholder

January – June 2005
University of Pennsylvania Law School
3400 Chestnut Street
Philadelphia, Pennsylvania 19104
Lecturer

2002 – 2005
The School District of Philadelphia
100 North Broad Street
Philadelphia, Pennsylvania 19103
General Counsel

1994 – 2002, Summer 1993, Summer 1992
Schnader Harrison Segal & Lewis, LLP
1600 Market Street
Philadelphia, Pennsylvania 19103
Partner (2001 – 2002)
Associate (1994 – 2001)
Summer Associate (Summer 1993, Summer 1992)

1993 – 1994
United States District Court for the Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106
Law Clerk to the Honorable Robert S. Gawthrop, III (deceased)

Summer 1991
United States District Court for the Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106
Intern to the Honorable Jan E. DuBois

1988 – 1990
WCAU-TV (CBS)
Ten Monument Road
Bala Cynwyd, Pennsylvania 19004
News Producer

1987 – 1988
WPXI-TV
11 Television Hill
Pittsburgh, Pennsylvania 15214
News Producer

December 1986 – June 1987
WTAE-TV (Hearst Corporation)
400 Ardmore Boulevard
Pittsburgh, Pennsylvania 15221
News Producer

September – December 1986
CNN
One CNN Center
Atlanta, Georgia 30303
News Writer

1985 – 1986
British Broadcasting Corporation
Broadcasting House
Portland Place
London, W1A 1AA
United Kingdom
Journalist Trainee

September 1984 – March 1985
WTNH-TV (Capitol Cities Communications)
Eight Elm Street
New Haven, Connecticut 06510
Production Assistant

Other affiliations (uncompensated):

2011 – 2012
Philadelphia Bar Association
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
Board of Governors (ex officio)

2010 – present
State Board of Education, Commonwealth of Pennsylvania
333 Market Street, First Floor
Harrisburg, Pennsylvania 17126
Council for Higher Education

2010 – present
State Board for Vocational Education, Commonwealth of Pennsylvania
333 Market Street, First Floor
Harrisburg, Pennsylvania 17126

2006 – present
 Philadelphia University
 4201 Henry Avenue
 Philadelphia, Pennsylvania 19144
 Executive Committee (2010 – present)
 Board of Trustees (2006 – present)

2005 – present
 Philadelphia Bar Foundation
 1101 Market Street, 11th Floor
 Philadelphia, Pennsylvania 19107
 Board of Trustees (2005 – present)
 President (2011 – 2012)
 President-Elect (2010)
 Treasurer (2006 – 2009)

2011 – 2013
 University of Pennsylvania Law School
 3501 Sansom Street
 Philadelphia, Pennsylvania 19104
 Law Alumni Society Board of Managers

2002 – 2010
 The Mann Center for the Performing Arts
 5201 Parkside Avenue
 Philadelphia, Pennsylvania 19131
 Board of Directors

2009 – 2010
 Forum of Executive Women
 1231 Highland Avenue
 Fort Washington, Pennsylvania 19034
 Board of Directors

2002 – 2005
 WYBE-TV
 8200 Ridge Avenue
 Philadelphia, Pennsylvania 19128
 Board of Directors (2001 – 2005)
 Treasurer (2002 – 2005)

Approximately 2002 – 2003
 Wynnewood Civic Association
 P.O. Box 25
 Wynnewood, Pennsylvania 19096
 Board of Directors

2001
 Lower Merion Township
 Cable Television Advisory Committee
 75 East Lancaster Avenue
 Ardmore, Pennsylvania 19003
 Advisory Committee

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Regional Reporter of the United States Court of Appeals for the Third Circuit for the
 Education Law Association's School Law Reporter (2008 – present)
 Pennsylvania Society, member (2008 – present)
 Selected for inclusion in "The Best Lawyers in America" (Education Law) (2007–
 present)
 Pennsylvania SuperLawyer (2012 – 2014)
 Selected as a Pennsylvania "Litigation Star" by the Benchmark Guide to America's
 Leading Litigation Firms and Attorneys ("Benchmark") (2013)
 Selected as one of the Top 250 Female Litigators in America by Benchmark (2012 –
 2014)
 Invited to be a member of The Sunday Breakfast Club (2012)
 Acknowledgement from the Philadelphia Bar Foundation for "Commitment to Access to
 Justice (2012)
 Recognition from the Philadelphia Bar Association, Board of Governors, for "invaluable
 and dedicated services" (2011, 2012)
 Women's eNews Philadelphia Leadership Award as an "Empowerer of Others" (2010)
 Named by Leadership, Inc., as one of Philadelphia's Top 101 "Connectors" (2007)
 Recognition by the Philadelphia Bar Association, Public Interest Section, for
 "outstanding effort in the 2006 Raising the Bar Campaign" (2007)
 Citation by the School Reform Commission of the Philadelphia School District, for
 services to the School District (2005)
 40 Under 40, Minority Executive Award (2001)
 Class of 2001, Leadership, Inc. (2001)
 University of Pennsylvania Law Review, Articles Editor (1992 – 1993)
 University of Pennsylvania Law Review, Associate Editor (1991 – 1992)
 University of Liverpool, Guild of Undergraduates: Life Member (for services to the
 Guild) (1984)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
 Delaware County Bar Association
 Education Law Association (2006 – present)
 Federal Bar Association
 Merit Selection Panel for United States Magistrate Judge
 Pennsylvania Bar Association
 Philadelphia Bar Association
 Ex officio member, Board of Governors (2011 – 2012)
 Co-Chair, Legislative Liaison Committee (2008 – present)
 Co-Chair, 50th Anniversary of *Brown v. Board of Education* Celebration (2004)
 Philadelphia Bar Foundation
 Board of Trustees (2005 – present)
 Co-Chair, Equal Justice Center Committee (2012 – present)
 President (2011 – 2012)
 President-Elect (2010)
 Chair, Institutional Giving (2009)
 Co-Chair, Andrew Hamilton Ball (2009)
 Chair, Awards Committee (2008)
 Chair, Board Development Committee (2007)
 Co-Chair, Raising the Bar campaign (2006, 2010)
 Treasurer (2006 – 2009)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New Jersey, 1993
 Pennsylvania, 1994

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Third Circuit, 1994
 United States District Court for the District of New Jersey, 1994

United States District Court for the Eastern District of Pennsylvania, 1994
 United States District Court for the Middle District of Pennsylvania, 2006

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Cable Television Advisory Committee of Lower Merion (2002)
 Commonwealth of Pennsylvania, State Board of Education (2010 – present)
 Council of Higher Education (2010 – present)
 State Board for Vocational Education (2010 – present)
 Special and Gifted Education Committee (2011 – present)
 Chair (2013 – present)
 Member, Vocational-Technical Education Committee (2011 – present)
 Member, Adhoc Committee on Private School Accreditation (2013 – present)
 Chair, Special Committee concerning the Porter Township Initiative Independent School District's application to transfer from East Stroudsburg Area School District to Wallenpaupack School District (2012)
 Chair, Special Committee concerning the Riegelsville Independent School District's application to transfer from Easton Area School District to the Palisades School District (2012)
 Chair, Committee on Special and Gifted Education (2014)
 Education Industry Association (2006)
 Forum of Executive Women (2004 – present)
 Board of Directors (2009 – 2010)
 Co-Chair, Public Sector Leadership Committee (2009 – 2011)
 Germantown Cricket Club (2010 – 2014)
 Mann Center for the Performing Arts
 Board of Directors (2002 – 2010)
 Co-Chair, Corporate Partners (2001 – 2003)
 Pennsylvania Society (2008 – present)
 Philadelphia University
 Board of Trustees (2006 – present)
 Achieving Innovation/Innovation Facilities Committee (2011 – present)
 Executive Committee (2010 – present)
 Chair, Nominating Committee (2010 – present)
 Campaign Committee (2010 – present).

Pyramid Club (active 1998 – 2011, dormant 2011 – present)
 Radnor Valley Country Club (approximately 2003 – 2004)
 The Sunday Breakfast Club (2012 – present)
 University of Pennsylvania Law School Alumni Society (1993 – present)
 Law Alumni Society Board of Managers (2011 – 2013)
 WYBE-TV
 Board of Directors (2001 – 2005)
 Treasurer (2002 – 2005)
 Wynnewood Civic Association (Approximately 2002 – 2003)
 Board of Directors

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Throughout my career I have written and spoken extensively. I have endeavored to find documentary evidence through a search of my files, my databases and the Internet and have provided what I have been able to locate.

Stepping Aside and Planning for Foundation's Future, PHILA. B. REP. (Dec. 2012). Copy supplied.

Shear Gratitude for Executive Director's Leadership, PHILA. B. REP. (Nov. 2012). Copy supplied.

Contributors Asked to Go Extra Mile for Grantees, PHILA. B. REP. (Oct. 2012). Copy supplied.

DLSC Members Chip in for Voter ID Case, PHILA. B. REP. (Sept. 2012). Copy supplied.

Corporate Counsel Pitch in for Pro Bono, PHILA. B. REP. (Aug. 2012). Copy supplied.

With Goals Accomplished, New Aspirations, PHILA. B. REP. (July 2012). Copy supplied.

Golf-Tennis Outing a Boost for Grantees, PHILA. B. REP. (June 2012). Copy supplied.

Hamilton Gala Headed to Parkway and Barnes Foundation on Nov. 3, PHILA. B. REP. (May 2012). Copy supplied.

Where Are We Today: My Time at Rishworth, Rishworth School Old Rishworthians website, Apr. 2012. Copy supplied.

Civil Justice Center – Idea Whose Time has Come, PHILA. B. REP. (Apr. 2012). Copy supplied.

Raising the Bar Campaign Needs Your Help, PHILA. B. REP. (Mar. 2012). Copy supplied.

A League of Extraordinary Board Members, PHILA. B. REP. (Feb. 2012). Copy supplied.

Cy Pres Grants Boost 2011 Giving to \$700,000, PHILA. B. REP. (Jan. 2012). Copy supplied.

Racing To Teach Kids Young, But How To Pay for It? LEGAL INTELLIGENCER BLOG, Dec. 1, 2011. Copy supplied.

Collaboration Assists Donors and Grantees, PHILA. B. REP. (Nov. 2011). Copy supplied.

New Jersey District Court Prevents Disability Rights Organizations from Observing Students with Disabilities in the Classroom, LEGAL INTELLIGENCER BLOG, Oct. 13, 2011. Copy supplied.

Grants Committee Assesses Groups' Needs, PHILA. B. REP. (Oct. 2011). Copy supplied.

State Budget Cuts Slash Aid to Neediest, PHILA. B. REP. (Sept. 2011). Copy supplied.

3rd Circuit: No Constitutional Right to Privacy for Sharing "Secret" Opinions, LEGAL INTELLIGENCER BLOG, Aug. 17, 2011. Copy supplied.

Program Pairs Young Lawyers, Nonprofits, PHILA. B. REP. (Aug. 2011). Copy supplied.

'Art of Giving' is Theme for Annual Benefit, PHILA. B. REP. (July 2011). Copy supplied.

Court Clarifies Disciplining Students Over Social Media Use – Or Does It? LEGAL INTELLIGENCER, June 28, 2011. Copy supplied.

Raising the Bar Campaign Going Strong, PHILA. B. REP. (June 2011). Copy supplied.

3rd Circuit Remands Title VII Case for Failing to Properly Apply Burden-Shifting Framework, LEGAL INTELLIGENCER BLOG, May 10, 2011. Copy supplied.

Grantees Partner with Medical Providers, PHILA. B. REP. (May 2011). Copy supplied.

2nd Circuit OKs Student's Sexual Harassment Suit Against Professor, LEGAL INTELLIGENCER, Apr. 1, 2011. Copy supplied.

3 Big Events to Boost Pro Bono This Year, PHILA. B. REP. (Apr. 2011). Copy supplied.

Punishment of School District Not 'Appropriate' Relief Under IDEA, LEGAL INTELLIGENCER BLOG, Mar. 11, 2011. Copy supplied.

Give, Support Public Interest Community, PHILA. B. REP. (Mar. 2011). Copy supplied.

Despite Economy, Grants Equal '09 Level, PHILA. B. REP. (Feb. 2011). Copy supplied.

3rd Circuit: Subcontractor Cannot Recover on Unjust Enrichment Claim Against School District, LEGAL INTELLIGENCER BLOG, Jan. 25, 2011. Copy supplied.

Helping Grantees Do What They Do Best, PHILA. B. REP. (Jan. 2011). Copy supplied.

This I Believe, LEADERSHIP. INC., Sept. 9, 2009. Copy supplied.

With Owen F. Lipsett, *No Child Left Behind's Accountability and Access Provisions: An Inherent Tension Within Supplemental Educational Services*

Programs, 216 Educ. L. Rep. 807 (West 2007). Copy supplied.

Litigator Learns In-House Counsel Are Not Law Firm Wannabes, LEGAL INTELLIGENCER, Feb. 17, 2006.) (reprint of *There and Back Again: One Lawyer's Journey Practicing Both Inside and Outside the Firm*, LEGAL INTELLIGENCER, Feb. 6, 2006.).

Women Lawyers Can Succeed as Mothers and Partners, LEGAL INTELLIGENCER, Jan. 6, 2006. Copy supplied.

With Paul McCarthy, *Supplemental Educational Services: State and Local Educational Agency Discretion Under Federal Scrutiny*, INQUIRY & ANALYSIS (Nat'l Sch. Boards Ass'n Council of Sch. Att'ys) (July 2005). Copy supplied.

Unique Issues Posed by Defamation Suits Involving Statements Made via the Internet, INTERNET NEWSLETTER, July 2002. Copy supplied.

With Carl A. Solano, *Court Stymies Congress's Second Attempt to Protect Minors from Harmful Material on the Web: the Child Online Protection Act is Unconstitutional*, SCHNADER HARRISON SEGAL & LEWIS TECHWATCH, Sept. 2000. Copy supplied.

With Carl A. Solano, *It's Not Just for Kids – How The Children's Online Privacy Protection Act Affects Your E-Business*, SCHNADER HARRISON SEGAL & LEWIS TECHWATCH, Apr. 2000. Copy supplied.

With Carl A. Solano, *It's Not Child's Play: Keeping Private Private on the Internet*, SCHNADER HARRISON SEGAL & LEWIS TECHWATCH, Apr. 2000. Copy supplied.

Cyber-Pirates May Have to Walk the Gangplank, SCHNADER HARRISON SEGAL & LEWIS TECHWATCH, Feb. 2000. Copy supplied.

With Carl Solano & Alan Lieberman, *"Slip-and-Fall Lawyer" Not Libelous*, LDRC Libel Letter, June 1998. Copy supplied.

With Carl Solano & Jennifer DuFault James, *Federal District Court Interprets Pennsylvania Law on Defamation Per Se as Applied to a Corporate Plaintiff*. Unknown publication and date. Copy supplied.

I prepared video and audio news reports when I worked as a television and radio journalist from 1984 through 1990. I have been unable to obtain all of the clips produced at the stations for which I worked, but I have supplied those that I had in my files on a CD-Rom.

- b. Supply four (4) copies of any reports, memoranda or policy statements you

prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

As a member of the State Board of Education for the Commonwealth of Pennsylvania since 2010, a member of the Board of Trustees for Philadelphia University since 2006, a member of the Board of Trustees for the Philadelphia Bar Foundation since 2005, and as an ex officio member of the Philadelphia Bar Association Board of Governors from 2011 – 2012, I have regularly attended board meetings at which I made comments and for which minutes were prepared. Also, I have occasionally attended committee meetings of these organizations at which I have made prepared comments. Included below are references to those meetings in which I made comments or presentations. In addition, although I did not personally draft or edit resolutions or annual reports, I did vote on some of them in the context of these meetings:

March 4, 2014: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

February 4, 2014: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

November 14, 2013: Pennsylvania State Board of Education meeting. Minutes supplied.

November 8, 2013: Philadelphia University Board of Trustees meeting. Minutes supplied.

September 20, 2013: Philadelphia University Board of Trustees meeting. Minutes supplied.

September 12, 2013: Pennsylvania State Board of Education meeting. Minutes and report supplied.

September 10, 2013: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

July 9, 2013: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

June 14, 2013: Philadelphia University Board of Trustees meeting. Minutes supplied.

June 4, 2013: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

May 7, 2013: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

March 8, 2013: Philadelphia University Board of Trustees meeting. Minutes and comments supplied.

2012: Philadelphia Bar Foundation Annual Report. Copy supplied.

December 20, 2012: Philadelphia Bar Association Board of Governors Meeting. Minutes supplied.

December 18, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

November 29, 2012: Philadelphia Bar Association Board of Governors Meeting. Minutes supplied.

November 9, 2012: Philadelphia University Board of Trustees meeting. Minutes and comments supplied.

November 6, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

October 2012: Philadelphia Bar Foundation, Strategic Plan 2013-2017. Strategic Plan supplied.

October 2, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

September 27, 2012: Philadelphia Bar Association Board of Governors Meeting. Minutes supplied.

September 18, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

August 16, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

July 16, 2012: Philadelphia Bar Association, Public Interest Section, Executive Committee Meeting. Minutes supplied.

July 12, 2012: Pennsylvania State Board of Education meeting. Minutes supplied.

June 8, 2012: Philadelphia University Board of Trustees meeting. Minutes supplied.

June 5, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

May 1, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

April 3, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

March 13, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

March 9, 2012: Philadelphia University Board of Trustees meeting. Minutes and comments supplied.

February 28, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

January 21, 2012: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

January 17, 2012: Philadelphia Bar Foundation Board retreat. Minutes supplied.

2011: Philadelphia Bar Foundation Annual Report. Copy supplied.

December 18, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

November 11, 2011: Philadelphia University Board of Trustees meeting. Minutes, comments and board document supplied.

November 8, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

October 25, 2011: Philadelphia Bar Association Board of Governors Meeting. Minutes supplied.

October 4, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

September 21, 2011: Philadelphia Bar Association, Public Interest Section, Executive Committee meeting. Minutes supplied.

September 13, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

August 15, 2011: Talking points (drafted by university personnel) for the Campaign Executive Committee of Philadelphia University regarding an overview of the Specter Center. Copy of document supplied.

August 14, 2011: Talking points (drafted by university personnel) for reports to the Campaign Executive Committee of Philadelphia University regarding an overview of the University's federal funding strategy. Copy of document supplied.

July 12, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

June 10, 2011: Philadelphia University Board of Trustees meeting. Minutes and comments supplied.

June 7, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

May 3, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

April 5, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

March 11, 2011: Philadelphia University Board of Trustees meeting. Copy of minutes and comments supplied.

March 1, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

February 8, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

January 18, 2011: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

2010: Philadelphia Bar Foundation Annual Report. Copy supplied.

December 15, 2010: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

November 12, 2010: Philadelphia University Board of Trustees meeting. Copy of minutes and comments supplied.

September 17, 2010: Philadelphia University Board of Trustees meeting.
Minutes supplied.

September 14, 2010: Philadelphia Bar Foundation Board of Trustees meeting.
Minutes supplied.

July 13, 2010: Philadelphia Bar Foundation Board of Trustees meeting. Minutes
supplied.

March 12, 2010: Philadelphia University Board of Trustees meeting. Copy of
minutes and comments supplied.

November 10, 2009: Philadelphia Bar Foundation Board of Trustees meeting.
Minutes supplied.

October 5, 2009: Philadelphia Bar Foundation Board of Trustees meeting.
Minutes supplied.

September 8, 2009: Philadelphia Bar Foundation Board of Trustees meeting.
Minutes supplied.

July 7, 2009: Philadelphia Bar Foundation Board of Trustees meeting. Minutes
supplied.

May 28, 2009: Philadelphia Bar Association Board of Governors Meeting.
Minutes supplied.

May 14, 2009: Philadelphia Bar Foundation Board of Trustees meeting. Minutes
supplied.

April 7, 2009: Philadelphia Bar Foundation Board of Trustees meeting. Minutes
supplied.

March 3, 2009: Philadelphia Bar Foundation Board of Trustees meeting.
Minutes supplied.

January 21, 2009: Philadelphia Bar Foundation Board of Trustees Retreat.
Minutes supplied.

October 7, 2008: Philadelphia Bar Foundation Board of Trustees meeting.
Minutes supplied.

March 4, 2008: Philadelphia Bar Foundation Board of Trustees meeting.
Minutes supplied.

December 5, 2007: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

May 1, 2007: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

May 2, 2006: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

April 27, 2006: Philadelphia Bar Association Board of Governors Meeting. Minutes supplied.

April 4, 2006: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

March 7, 2006: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

February 7, 2006: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

January 19, 2006: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

April 5, 2005: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

March 1, 2005: Philadelphia Bar Foundation Board of Trustees meeting. Minutes supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Since 2010, as a member of the Pennsylvania State Board of Education and State Board for Vocational Technical Education, I have regularly voted on resolutions concerning a wide variety of education policy matters. The State Board's work is conducted through committees which gather information and public comment before making a recommendation to the full board, which generally approves the recommendation of the committee by way of resolution. The Board does not post records of which way members vote on individual resolutions, and I do not recall how I voted on each resolution or whether I voted on a particular resolution. I have, however, included links to all of the available resolutions:

2014: http://www.portal.state.pa.us/portal/server.pt/community/board_actions/19740/2014/1692454,

2013: http://www.portal.state.pa.us/portal/server.pt/community/board_actions/19740/2013/1446300,

2012: http://www.portal.state.pa.us/portal/server.pt/community/board_actions/19740/2012/1070782,

2011: http://www.portal.state.pa.us/portal/server.pt/community/board_actions/19740/2011/819232,

2010: http://www.portal.state.pa.us/portal/server.pt/community/board_actions/19740/2010/795877.

On June 5, 2014, as Chair of the Special and Gifted Education Committee of the Pennsylvania State Board of Education, I made introductory and closing comments at a public roundtable in Philadelphia. Comments supplied.

On May 22, 2014, as Chair of the Special and Gifted Education Committee of the Pennsylvania State Board of Education, I made introductory and closing comments at a public roundtable in Pittsburgh. Comments supplied.

In April 2014, as Chair of the Special and Gifted Education Committee of the Pennsylvania State Board of Education, I spoke extemporaneously regarding the work to be undertaken by the committee in reviewing state regulations regarding gifted students. I have no notes, transcript, or recording.

In July 2012, I was appointed by the Pennsylvania State Board of Education to chair a Special Committee concerning the Porter Township Initiative Independent School District's application to transfer from East Stroudsburg Area School District to Wallenpaupack School District. The committee held a two-day hearing on May 16, 2013 and May 17, 2013 after which we reviewed court records, witness testimony and evidentiary submissions before issuing our recommendation. Transcripts supplied.

In March 2012, I was appointed by the Pennsylvania State Board of Education to chair a Special Committee concerning the transfer of the Riegelsville Independent School District from the Easton Area School District to the Palisades School District. The committee held an informal hearing before issuing our recommendation. Talking points and report supplied.

July 28, 2010: I was signatory to a letter, signed by 161 other graduates of Harvard Law School, the University of Pennsylvania Law School, and the University of Texas School of Law, that recommended President Obama

nominate Professor Elizabeth Warren to the Consumer Financial Protection Board. Copy supplied.

On May 15, 2003, I provided testimony to the Urban Affairs Committee of the Pennsylvania House of Representatives' Urban Affairs Committee at a Public Hearing held in Philadelphia, Pennsylvania regarding school violence. I did not prepare any written notes for the testimony and I do not recall the specifics of my testimony.

Mar. 15, 2000: I delivered remarks to the Lower Merion Township Board of Commissioners in support of the Historic Preservation Ordinance during the public comment portion of the meeting. I spoke on behalf of the Wynnewood Civic Association. I did not retain any notes and I do not recall the subject matter of my remarks.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Throughout my career I have written and spoken extensively. I have endeavored to find documentary evidence through a search of my files, my databases and the Internet and have provided what I have been able to locate.

May 17, 2014: Speaker, remarks at Philadelphia University graduation to confer an honorary degree on Jeffrey J. Selinger, Philadelphia, Pennsylvania. Speech supplied.

September 25, 2013: Speaker, Women's Campaign Fund ("WCF") Philadelphia Leadership Circle Briefing, Philadelphia, Pennsylvania. I introduced Siobhan Bennett, the then President and CEO of WCF. I have no notes, transcript, or recording. The address of WCF is 1900 L Street, NW, Suite 500, Washington DC 20036.

September 19, 2013: Presenter, status of the Civil Justice Center project, to leaders of the Philadelphia Bar Association, Philadelphia, Pennsylvania. PowerPoint supplied.

May 28, 2013: Speaker, "Getting Involved in Bar Associations and Bar Foundations," American Bar Association Judicial Intern Opportunity Program, Philadelphia Pennsylvania. I provided advice to young lawyers on getting

involved in the organized bar. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

April 22, 2013: Speaker, "Weighing the Risks for Independent Schools," Schools in Balance Conference, Baltimore, Maryland. The Schools in Balance program is a collaboration between Campus Outreach Services, National Business Officers Association, and The Association of Boarding Schools. PowerPoint supplied.

February 14, 2013: Panelist, Core Class Connector Panel, Leadership Philadelphia, Philadelphia, Pennsylvania. My contributions were regarding my experiences as a Philadelphia "Connector" and were in response to questions posed by a moderator. I have no notes, transcripts, or recording. The address of Leadership Philadelphia is 123 South Broad Street, Suite 2044, Philadelphia Pennsylvania 19109.

November 3, 2012: Speaker, welcoming remarks, 34th Andrew Hamilton Gala at the Barnes Foundation, Philadelphia Bar Foundation, Philadelphia, Pennsylvania. My remarks concerned the work of the Foundation's grantees and the generosity of the sponsors of the event. I have no notes, transcript, or recording. The address of the Philadelphia Bar Foundation is 1101 Market Street, Philadelphia, Pennsylvania 19107.

July 18, 2012: Speaker, "No Child Left Behind & Education Law," Penn Law Pre-College Summer Program, Philadelphia, Pennsylvania. Outline supplied.

June 13, 2012: Speaker, "Getting Involved in Bar Associations and Bar Foundations," American Bar Association Judicial Intern Opportunity Program, Philadelphia, Pennsylvania. I provided advice to young lawyers on getting involved in the organized bar. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

May 24, 2012: Panelist, "Social Media and Training and Education," Social Media Summit, Harrisburg University of Science and Technology, Harrisburg, Pennsylvania. Outline supplied.

May 13, 2012: Speaker, remarks at Philadelphia University graduation to confer an honorary degree on Dr. Walter Cohen, Philadelphia, Pennsylvania. Speech supplied.

June 10, 2011: Speaker, welcoming remarks, Philadelphia Bar Foundation thank you event at the Barnes Foundation, Merion, Pennsylvania. Outline supplied.

April 14, 2011: Guest speaker, welcoming remarks at a naturalization ceremony in the U.S. District Court for the Eastern District of Pennsylvania, Philadelphia, Pennsylvania. Transcript supplied.

October 20, 2010: Speaker, Gala Benefit Dinner, Women's eNews Philadelphia Leadership Award, Bryn Mawr, Pennsylvania. I gave brief remarks, expressing my appreciation for being honored. I have no notes, transcript, or recording, but press coverage is supplied. The address for Women's eNews is Six Barclay Street, Sixth Floor, New York, New York 10007.

May 16, 2010: Speaker, remarks at Philadelphia University graduation to confer an honorary degree on Congressman Chaka Fattah, Philadelphia, Pennsylvania. Speech supplied.

May 14, 2010: Speaker, "Injunctive Relief in State and Federal Courts in Pennsylvania," Pennsylvania Bar Institute CLE, Mechanicsburg, Pennsylvania. Presentation and outline materials supplied.

July 27, 2009: Speaker, to leaders of the Philadelphia bar regarding a conference proposed by the Vice-Chancellor of the Philadelphia Bar Association to address work/life balance and the future of law practice issues in Philadelphia, Pennsylvania. Outline supplied.

April 28, 2009: Panelist, "Art of Rainmaking," Philadelphia Bar Association Women in the Profession Committee, Philadelphia, Pennsylvania. Recording available at: http://donation.philabarfoundation.org/cgi-bin/WebObjects/PBAReadOnly.woa/wa/iTunesPodcast?galleryName=Podcasts_Speaker_Programs.

March 11, 2009: Moderator, "Rainmaking and Business Development for Women: First Hand Advice and Success Stories Teleconference," Continuing Legal Education Course, HB Litigation Conferences, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address for HB Litigation Conferences is P.O. Box 141, Clifton Heights, Pennsylvania 19018.

January 14, 2009: Moderator, "Rainmaking and Business Development for Women: First Hand Advice and Success Stories Teleconference," Continuing Legal Education Course, HB Litigation Conferences, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address for HB Litigation Conferences is P.O. Box 141, Clifton Heights, Pennsylvania 19018.

November 20, 2008: Speaker, "IDEA's Over-Identification Provision: A Good Idea Going Nowhere?" 54th Annual Education Law Association Conference, San Antonio, Texas. Presentation materials supplied.

November 3, 2008: Panelist, debate regarding education policy of presidential candidates Barack Obama and John McCain, St. Joseph's University, City Line Avenue, Philadelphia, Pennsylvania. Outline supplied.

September 17, 2008: Moderator, "Rainmaking, Negotiating, and Collaborative Development," BVR/Mealey's Women in the Legal Profession Summit, Philadelphia, Pennsylvania. Notes supplied.

March 1, 2008: Speaker, "Marketing, Business Development and the Rest of Your Life as a Lawyer—U Penn Students," University of Pennsylvania Law School, Philadelphia, Pennsylvania. I provided advice to law students on developing and marketing their practices upon graduation. I have no notes, transcript, or recording. The address of the University of Pennsylvania Law School is 3501 Sansom Street, Philadelphia, Pennsylvania 19104.

November 15, 2007: Speaker, "Students' Use of Online Social Networks: Freedom of Speech Versus Discipline," Education Law Association 53rd Annual Conference, San Diego, California. Presentation materials supplied.

October 12, 2006: Speaker, "Accountability and Access: An Inherent Tension in SES Programs," Education Law Association's 52nd Annual Conference, Paradise Island, Bahamas. Presentation materials supplied.

October 6, 2006: Speaker, "The Nuts and Bolts of Special Education Law," Philadelphia Association of Paralegals' Annual Education Conference, Philadelphia, Pennsylvania. Presentation materials supplied.

July 12, 2005: Panelist, "Practicing Law in Philadelphia, Strategies for Success for Young Lawyers and Summer Associates," Philadelphia Bar Association Young Lawyers Division and Membership Committee, Philadelphia, Pennsylvania. I provided advice for young lawyers on strategies to succeed in their careers. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, Pennsylvania 19107.

July 17, 2003: Panelist, "Achieving Success as a Woman in Law," Philadelphia Bar Association, Women in the Profession Committee, Philadelphia, Pennsylvania. I provided advice to women lawyers on strategies to succeed in their careers. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, Pennsylvania 19107.

November 15, 2002: Speaker, CLE "The Law of the Internet in Pennsylvania," National Business Institute, Philadelphia, Pennsylvania. Presentation materials supplied.

February 28, 2002: Speaker, "Security, Malice and the Law in E-Business," DeSales University eBusiness Institute Winter Forum, Center Valley, Pennsylvania. Presentation materials supplied.

September 13, 2001: Panelist, "In Charge: Establishing an Authoritative Presence as a Junior Woman Lawyer," Philadelphia Bar Association's Women in the Profession Committee, Junior Women Lawyers Task Force, Philadelphia, Pennsylvania. I provided young women lawyers with advice on how to establish an authoritative presence. I have no notes, transcript or recording, but press coverage is supplied. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, Pennsylvania 19107.

February 1, 2001: Speaker, "Online Legal Developments," Pennsylvania Newspaper Association's Ninth Annual Media Law Conference, Harrisburg, Pennsylvania. Presentation materials supplied.

November 8, 2000: Panelist, "How the Web Was Won – Websites that Work!" 12th Annual Philadelphia 100 Conference, sponsored by Philadelphia Business Journal and Wharton Small Business Development Center, Philadelphia, Pennsylvania. I provided small businesses with a legal framework for using the Internet as part of their business model. I have no notes, transcript or recording. The address of the Philadelphia Business Journal is 400 Market Street, Suite 1200, Philadelphia, Pennsylvania 19106. The address of the Wharton Small Business Development Center is 3733 Spruce Street, Philadelphia, Pennsylvania 19104.

November 1, 2000: Speaker, "Drafting Privacy Policies for Clients' Web Sites," Philadelphia Bar Association's Sixth Annual Business Lawyers' Institute, Philadelphia, Pennsylvania. Presentation materials supplied.

October 19, 2000: Speaker, privacy and the Internet, Philadelphia Cosmopolitan Club, Philadelphia, Pennsylvania. I provided remarks to members of the Cosmopolitan Club about protecting privacy on the Internet. I have no notes, transcript, or recording. The address of the Philadelphia Cosmopolitan Club is 1616 Latimer Street, Philadelphia, Pennsylvania 19103.

February 10, 2000: Lecturer, Internet Jurisdiction, Villanova University, Villanova, Pennsylvania. I lectured graduate students on the application of existing jurisdictional jurisprudence to the Internet. I have no notes, transcript, or recording. The address of Villanova University is 800 East Lancaster Avenue, Villanova, Pennsylvania 19085.

February 1, 2000: Speaker, "On-Line Legal Developments: the Anti-Cyber Squatting Act and ICANN's Domain Name Dispute Resolution Procedure," Eighth Annual Media Lawyers Conference and Pennsylvania Publishers' Association Conference, Harrisburg, Pennsylvania. I spoke on recent developments in Internet jurisprudence. I have no notes, transcript, or recording. The address of the Pennsylvania Publishers' Association is 3899 North Front Street, Harrisburg, Pennsylvania 17110.

February 1, 2000: Speaker, "First Amendment and the Internet," Eighth Annual Media Lawyers Conference and Pennsylvania Publishers' Association Conference, Harrisburg, Pennsylvania. I have no notes, transcript, or recording. The address of the Pennsylvania Newspaper Association is 3899 North Front Street, Harrisburg, Pennsylvania 17110.

November 12, 1999: Panelist, "Coping With Electronic Security in Today's IT World," 11th Annual Philadelphia 100 Conference, sponsored by Philadelphia Business Journal and Wharton Small Business Development Center, Philadelphia, Pennsylvania. I spoke on the need for e-commerce businesses to put privacy programs in place. I have no notes, transcript, or recording. The address of the Philadelphia Business Journal is 400 Market Street, Suite 1200, Philadelphia, Pennsylvania 19106. The address of the Wharton Small Business Development Center is 3733 Spruce Street, Philadelphia, Pennsylvania 19104.

October 1999: Speaker, E-sign/UETA, Mid-Atlantic E-Commerce Conference, the Pennsylvania Chamber of Business and Industry, Hershey, Pennsylvania. PowerPoint and presentation materials supplied.

May 21, 1999: Speaker, "A Practitioner's Guide to Discovery of Electronically Stored Information," Chester County Bench Bar, Chester County, Pennsylvania. Presentation materials I prepared with my co-presenter supplied.

January 22, 1999: Speaker, "Defamation on the Internet: On-Line Developments," Pennsylvania Newspaper Association, 7th Annual Media Lawyers Conference. The presentation was on the application of defamation jurisprudence to the Internet. I have no notes, transcript, or recording. The address of the Pennsylvania Newspaper Association is 3899 North Front Street, Harrisburg, Pennsylvania 17110.

November 12, 1998: Moderator, "Preparing the Future of Business Technology – How Does the Year 2000 Affect Your Business?," Tenth Annual Philadelphia 100 Conference, sponsored by Philadelphia Business Journal and Wharton Small Business Development Center, Philadelphia, Pennsylvania. The panel provided small businesses with a legal framework for addressing Y2K concerns. I have no notes, transcript or recording. The address of the Philadelphia Business Journal is 400 Market Street, Suite 1200, Philadelphia, Pennsylvania 19106. The address of the Wharton Small Business Development Center is 3733 Spruce Street, Philadelphia, Pennsylvania 19104.

October 1, 1998 and October 27, 1998: Speaker, Libel and Privacy Law and Practice in Pennsylvania," National Business Institute, Philadelphia, Pennsylvania. Presentations materials supplied.

February 1998: Speaker, "On-Line Developments: Internet and the Media," 6th Annual Media Lawyers Conference, an event run by the Pennsylvania Newspaper

Association, Harrisburg, Pennsylvania. The presentation concerned the media's use of the Internet and the legal impact of the use of the Internet as a delivery method. I have no notes, transcript, or recording. The address of the Pennsylvania Newspaper Association is 3899 North Front Street, Harrisburg, Pennsylvania 17110.

January 1998: Speaker, "Copyright on the Internet," Pennsylvania Newspaper Association, Harrisburg, Pennsylvania. The presentation concerned the application of copyright jurisprudence on the Internet. I have no notes, transcript, or recording. The address of the Pennsylvania Newspaper Association is 3899 North Front Street, Harrisburg, Pennsylvania 17110.

June 23, 1997: Panelist, "Challenge of Cyberspace and Constitutional Rights," White Dog Café, Philadelphia, Pennsylvania. The presentation concerned the application of constitutional jurisprudential principles on the Internet. I have no notes, transcripts or records. The address of the White Dog Café is 3420 Sansom Street, Philadelphia, Pennsylvania 19104.

March 19, 1997: Speaker, "Constitution and the Internet," Philadelphia Chapter of The Association for Women in Communications. The presentation concerned the application of constitutional jurisprudential principles on the Internet. I have no notes, transcript, or recording. The address of The Association of Women in Communications is 3337 Duke Street, Alexandria, Virginia 22314.

Unknown Date: Speaker, "Suing the Anonymous Defamation Defendant." I do not recall the sponsor or location of the event. Outline supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

On many occasions, I have been interviewed by reporters on a wide variety of topics. I have provided every report I can find in which I was quoted or referenced.

There are three video clips on my firm's website in which I discuss my practice, which are available at http://www.hangle.com/Video_Gallery/.

The Forum of Executive Women, Public Sector Leadership description (undated). Copy supplied.

Martha Woodall, *School District Must Pay Shuttered Charter's Bill*, PHILA. INQUIRER, Nov. 11, 2013. Copy supplied.

Carla Robinson, *Why Not a Woman for Mayor?*, AXISPHILLY, Nov. 9, 2013. Copy supplied.

Martha Woodall, *Embattled Solomon Cyber Charter to Close*, PHILA. INQUIRER, Oct. 11, 2013. Copy supplied.

Martha Woodall, *Phila. Cyber Charter Fights State Bid to Close It*, PHILA. INQUIRER, Apr. 24, 2013. Copy supplied.

Sy Snyder, *1/18 Ups & Down*, Politics Pa., Jan. 18, 2013. Copy supplied.

Philadelphia Bar Foundation, *Bar Foundation Board of Trustees Approves Strategic Plan*, Nov. 7, 2012. Copy supplied.

Wendy Beetlestone, *One Great Idea*, PHILA. INQUIRER/PHILA. DAILY NEWS, June 11, 2012. Video available at:
<http://www.philly.com/philly/video/BC1684304359001.html>.

Dan Hardy, *No Easy Answers to Financial Woes of Chester Upland Schools*, PHILA. INQUIRER, Jan. 11, 2012. Copy supplied.

Press Release: *Bar Foundation Hamilton Benefit Nov. 19*, PHILA. B. ASS'N, Oct. 24, 2011. Copy supplied.

Radio Interview: *Executive Leaders Radio*, Oct. 14, 2011. Audio recording available at https://www.youtube.com/watch?v=e_4RncYa7-I.

Mark Fazlollah, *Nominee for Philadelphia School Commission Got High Rate for District Legal Work*, PHILA. INQUIRER, June 24, 2011. Copy supplied.

Phila. Bar Foundation Receives Gift Designated by Exelon Award Winner Kevin Stepanuk, Esq., Video, Philadelphia Bar Foundation, June 17, 2011. Video recording available at <https://www.youtube.com/watch?v=ITeELHXAwIc>.

Federal Appeals Court Rules Students Who Mocked Their Principals on MySpace Can't Be Disciplined by School, DAILY MAIL, MAILONLINE, June 14, 2011. Copy supplied.

MaryClaire Dale, *Pa. Teens Can't Be Suspended for MySpace Parodies*, BUS. WEEK, June 13, 2011. Copy supplied.

Press Release: *Kevin Stepanuk, Exelon/PECO Associate General Counsel Donates Community Volunteer Award to Philadelphia Bar Foundation*, PHILA. B. FOUND., May 10, 2011. Copy supplied.

Bonnie Squires, *From Wynnewood to the World: Memories, Jurists, Music and Poems*, MAIN LINE TIMES, Mar. 16, 2011. Copy supplied.

Press Release: *Wendy Beetlestone Named President of Philadelphia Bar Foundation*, HANGLEY ARONCHICK SEGAL & PUDLIN, Dec. 17, 2010. Copy supplied.

Beetlestone on State Board of Education, MAIN LINE TIMES, Nov. 29, 2010. Copy supplied.

Press Release: *Hangley Aronchick Segal & Pudlin Shareholder Wendy Beetlestone Appointed to State Board of Education*, HANGLEY ARONCHICK SEGAL & PUDLIN, Oct. 15, 2010. Copy supplied.

Sandy Hingston, *Buzz Bissinger: A Savior for the City*, PHILA. MAG., May 2010. Copy supplied.

Amy Ginensky, *Answer Call for Raising the Bar Campaign*, PHILA. BAR. REP., Apr. 2010. Copy supplied.

Amaris Elliott-Engel, *In Bar Campaign, Participation Down but Donors Gave More*, LEGAL INTELLIGENCER, Mar. 17, 2010. Copy supplied.

Press Release, *Wendy Beetlestone Elected President-Elect of the Philadelphia Bar Foundation*, HANGLEY ARONCHICK SEGAL & PUDLIN, Jan. 4, 2010. Copy supplied.

Public Sector Leadership Committee, The Forum of Executive Women (2009), available at <http://www.forumofexecutivewomen.com/Committees-and-Initiatives/Program-Committee/Public-Sector-Leadership/65/>.

Madeline Branden, *Despite Recession, Legal Community Continues Giving Back*, LEGAL INTELLIGENCER, Dec. 1, 2009. Copy supplied.

Amaris Elliott-Engel, *Civil Legal Services May Face Massive Budget Cuts*, LEGAL INTELLIGENCER, June 4, 2009. Copy supplied.

Catherine Lucey, *You've Come a Short Way, Baby: Likeliest Candidates to Topple City & State's Old-Boys Network*, PHILA. DAILY NEWS, June 2, 2009. Copy supplied.

Amy Ginensky, *Changing Times Call for Changing Gala*, PHILA. B. REP., Apr. 2009. Copy supplied.

Martha Woodall, *Cyber Charter Suit Raises Free-Speech Questions*, PHILA. INQUIRER, Feb. 9, 2009. Copy supplied.

Martha Woodall, *Devon Charter Founder Sues Parents*, PHILA. INQUIRER, Feb. 3, 2009. Copy supplied.

Words of Wisdom, ABA Section of Litigation (Fall 2008). Copy supplied.

Gina Passarella, *Case Questioning Whether Charters Is a Contract Goes to Pa. High Court*, LEGAL INTELLIGENCER, June 30, 2008. Copy supplied.

News in Brief: Court Denies Chester-Upland Panel's Appeal, LEGAL INTELLIGENCER, May 20, 2008. Copy supplied.

Mensah Dean, *District Lawyer Bet\$\$ Predecessor by 52%*, PHILA. DAILY NEWS, May 20, 2008. Copy supplied.

Darran Simon, *The Next Challenge*, TIMES-PICAYUNE, May 4, 2007. Copy supplied.

New Orleans Hires Veteran to Run City's Schools, NPR, May 4, 2007. Copy supplied.

Asher Hawkins, *Rendell Administration Takes Control of Chester Upland Schools*, LEGAL INTELLIGENCER, Apr. 19, 2007. Copy supplied.

Catherine Gewertz, *Governor Wages Battle for Control of Pa. District*, EDUCATION WEEK, Jan. 24, 2007. Copy supplied.

135th Firm Agrees to Raise the Bar; Nearly \$1.5 Million Raised, PHILA. B. ASS'N, Dec. 21, 2006. Copy supplied.

Mark Scolforo, *Federal Judge Considers Whether to Toss Pay-Raise Lawsuit*, ASSOCIATED PRESS, May 20, 2006. Copy supplied.

Charles Thompson, *Federal Suit Blasts Pay-Raise Process*, PATRIOT NEWS, May 20, 2006. Copy supplied.

M.L. Ingram, *Lawyer Helping Needy*, PHILADELPHIA TRIBUNE, Apr. 23, 2006. Copy supplied.

Asher Hawkins, *39 Firms Join Bar Fund-Raising Campaign*, LEGAL INTELLIGENCER, Apr. 20, 2006. Copy supplied.

Dale Mezzacappa, *Member of Chester Upland Board to Resign*, PHILA. INQUIRER, Dec. 17, 2005. Copy supplied.

Dale Mezzacappa, *Chester Activists Call Lawsuit Last Hope for Decent Education*, PHILA. INQUIRER, Nov. 30, 2005. Copy supplied.

Dale Mezzacappa, *Control of Chester Schools in Court*, PHILA. INQUIRER, Nov. 29, 2005. Copy supplied.

Larry Rulison, *Leaving School District*, PHILA. BUS. J., July 11, 2005. Copy supplied.

Porus P. Cooper, *Business News in Brief: School District Lawyer Leaving for Private Practice*, PHILA. INQUIRER, July 1, 2005. Copy supplied.

Gloria Campisi, *School District's Top Lawyer Resigns*, PHILA. DAILY NEWS, June 30, 2005. Copy supplied.

Asher Hawkins, *School District GC Joining Hangley Aronchick*, Legal Intelligencer, June 30, 2005. Copy supplied.

ED Allows Philadelphia to Set Deadline for Providing SES, TITLE I MONITOR, Mar. 2005. Copy supplied.

Approximately fall 2004: I participated in a live interview on CNN in my official capacity as the General Counsel for the School District of Philadelphia regarding CEO Paul Vallas's initiative to encourage partnerships between faith-based groups and our public schools, including mentoring and tutoring and after school programs. I have been unable to obtain a transcript or recording.

Dale Mezzacappa, *Harassment Policy is Broadened*, PHILA. INQUIRER, Aug. 19, 2004. Copy supplied.

Mensah Dean, *Schools Get Tougher on Same-Sex Torment*, PHILA. DAILY NEWS, Aug. 19, 2004. Copy supplied.

Amy Worden, *Rendell, Officials Favor Expansion of Megan's Law: A Senate Panel Heard that Public-Notification Rules Apply to Just 47 Out of 7,786 Sex Offenders in Pa.*, PHILA. INQUIRER, July 21, 2004. Copy supplied.

Martha Woodall, *Charter Proposal Causes Alarm*, PHILA. INQUIRER, May 10, 2004. Copy supplied.

Asher Hawkins, *Charter School for 'Mentally Gifted' Kids OK'd*, LEGAL INTELLIGENCER, Apr. 19, 2004. Copy supplied.

Mensah M. Dean & Gloria Campisi, *One Mug Shot Was That of a School Principal*, PHILA. DAILY NEWS, Apr. 15, 2004. Copy supplied.

Mensah Dean, *School Improvements Lead Judge to Stay 1970 Desegregation Suit*, PHILA. DAILY NEWS, Mar. 19, 2004. Copy supplied.

Susan Snyder & Stephan Salisbury, *District Announces Tentative Pact on Discipline*, PHILA. INQUIRER, Feb. 12, 2004. Copy supplied.

Paul Carpenter, *Decent Students Need a Few Rules for Themselves*, THE MORNING CALL, Feb. 1, 2004. Copy supplied.

David Caruso, *School District Threatens Lawsuit to Cut Red Tape on Discipline*, ASSOCIATED PRESS, Jan. 30, 2004.

Stuart Ditzen, *\$10 Million Settlement Reached in Boy's Death*, PHILA. INQUIRER, Jan. 28, 2004. Copy supplied.

News in Brief from Philadelphia, ASSOCIATED PRESS, Jan. 22, 2004.

Mensah Dean, *Teacher Who Sued District Is Fired*, PHILA. DAILY NEWS, Jan. 20, 2004. Copy supplied.

Susan Snyder, *City Schools Faulted on Quelling Violence*, PHILA. INQUIRER, Jan. 15, 2004. Copy supplied.

Larry Rulison, *City Schools Law Department Bolsters its Staff*, PHILA. BUS. J., Nov. 3, 2003. Copy supplied.

Susan Snyder, *Facing Unruly Students, Teacher Goes to Court*, PHILA. INQUIRER, Oct. 21, 2003. Copy supplied.

October 20, 2003: I recall giving interviews to television stations outside of a courtroom following an argument on a case involving a teacher who had left the employ of the School District of Philadelphia. I have been unable to obtain a transcript or recording.

Susan Snyder, *Schools Seek Way to Allow Public-to-Catholic Transfers: The Phila. District Needs Options for Students Trying to Leave Low-Performing Schools, but Some Fear the Legal Implications*, PHILA. INQUIRER, Oct. 17, 2003. Copy supplied.

Susan Snyder, *Phila. District Fires Convicted Felon*, PHILA. INQUIRER, July 17, 2003. Copy supplied.

Marian Uhlman, *City Council Requests Hearings on School District Beverage Bids*, PHILA. INQUIRER, June 13, 2003. Copy supplied.

Mensah M. Dean, *Six School Managers Reach Deals to Continue Teaching in the Fall*, PHILA. DAILY NEWS, June 12, 2003. Copy supplied.

Mensah Dean, *School Crime Shows Jump of 45 Percent*, PHILA. DAILY NEWS, May 16, 2003. Copy supplied.

Joan Oleck, *Profile: Back to School*, CORPORATE COUNSEL (Mar. 2003). Copy supplied.

Susan Snyder, *Investigator, Legal Efforts in Works for City Schools*, PHILA. INQUIRER, Jan. 16, 2003. Copy supplied.

Mensah Dean, *Phila. Schools Beefing Up Biz Operations*, PHILA. DAILY NEWS, Jan. 16, 2003. Copy supplied.

Roxanne Patel, *The Dow of Leadership*, PHILA. MAG. (June 2002). Copy supplied.

Reid Goldsborough, *Using Common Sense on the Internet Can Ward Off Legal Woes*, PHILA. INQUIRER, Apr. 2, 2001. Copy supplied.

Peg Brickley, *Wharton Business Plan in Home Stretch*, DBUSINESS.COM, Apr. 10, 2000. Copy supplied.

Lea Sitton Stanley, *Art Museum's Show Results in Case of Lawyers Versus Clay*, PHILA. INQUIRER, Apr. 2, 1997. Copy supplied.

Joshua Goldwert, *Attorney General Candidate Vies for Votes*, THE DAILY PENNSYLVANIA, Oct. 29, 1992. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

- i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]

civil proceedings:	___%
criminal proceedings:	___% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Since 2010, I have served as a member of the Pennsylvania State Board of Education as part of its Council for Higher Education as well as a member of the Pennsylvania State Board for Vocational Education. I was nominated by Governor Rendell and confirmed by the Pennsylvania Senate.

From 2002 to 2005, I served as the General Counsel for the School District of Philadelphia. I was appointed by the School Reform Commission of the School District of Philadelphia on the recommendation of CEO Paul Vallas.

In 2002, I served as a member of the Lower Merion Township Cable Television Advisory Committee. I was appointed by Lower Merion Township Commissioners.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have reviewed all of my personal records for information relating to the roles I may have played in various political campaigns, and the information below is the best I could gather regarding those activities.

In 2010, I was a member of the finance committee for Manan Trivedi, who was a candidate for the U.S. House of Representatives. I also have hosted or co-hosted fundraisers for each of the following candidates (in reverse chronological order): Senator Bob Casey, Jr. for U.S. Senate (October 26, 2012; April 10, 2011; March 27, 2006); President Barack Obama (June 30, 2011); Joe Hoeffel for Governor of Pennsylvania (May 11, 2010); Senator Arlen Specter for U.S. Senate (July 24, 2009); and Bob Roggio for U.S. House of Representatives (September 14, 2008).

In addition, I recall that I have occasionally given permission for my name to be used in connection with other fundraisers; unfortunately, I have not kept records of those instances and do not have any independent recollection of the specific candidates or campaigns.

In 2006, 2008, and 2010, I worked with a team of people to organize attorneys from across Pennsylvania to work on voter issues that arise on election day on behalf of the Pennsylvania Democratic Party.

In the week prior to the November 4, 2008 general election, I participated in an education policy debate at Saint Joseph's University in Philadelphia on behalf of then-presidential candidate Senator Obama.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1993 to 1994, I served as a law clerk to the Honorable Robert S. Gawthrop, III, District Judge for the United States District Court for the Eastern District of Pennsylvania.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1993 – 2002
Schnader Harrison Segal & Lewis, LLP
1600 Market Street
Philadelphia, Pennsylvania 19103
Summer Associate (1992, 1993)
Associate (1994 – 2001)
Partner (2001 – 2002)

2002 – 2005
School District of Philadelphia
100 North Broad Street
Philadelphia, Pennsylvania 19103
General Counsel

2005 – present
 Hangley Aronchick Segal Pudlin & Schiller
 One Logan Square, 27th Floor
 Philadelphia, Pennsylvania 19103
 Shareholder

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or an arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1994 to 2002, I was an associate with the firm of Schnader Harrison Segal & Lewis, LLP. At Schnader, my practice focused on federal and state commercial litigation relating to a broad variety of substantive areas and legal issues including insurance; antitrust; technology, software, and e-commerce; patent, trademark and copyright; contract law; defamation; privacy; and, accountants' malpractice. I had significant sole file responsibility and extensive experience directing litigation teams. I also handled a portfolio of stolen/lost packages cases for United Parcel Service at least one of which I took to trial in Philadelphia's municipal court.

From 2002 to 2005, I served as General Counsel of the Philadelphia School District. In this role, I provided legal advice, counsel and representation to the School District, including strategic legal and operational guidance to the School Reform Commission and to District management. I managed an annual legal budget of six million dollars and a team of in-house attorneys handling commercial litigation, torts, labor and employment, special education, government, contracting, and transactional matters. I also selected and supervised outside counsel representing the School District and served as parliamentarian to the School Reform Commission.

Since 2005, I have had a diverse practice at Hangley Aronchick Segal Pudlin & Schiller, which includes the representation of individuals and entities in a variety of disputes. I continue to function as a commercial litigator with a focus in financial services and education. I also have handled small matters for various charter schools including special education due process hearings.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1994 to 2002, at Schnader, I functioned as a commercial litigator and developed specialties in First Amendment Law and in financial services litigation. Clients included a university, emerging growth companies, municipalities, media firms, pharmacies, mushroom growers, software developers, and a mortgage insurance company.

From 2002 to 2005, I served as General Counsel of the Philadelphia School District. As such, my client was the School District of Philadelphia, and I developed a specialty in education law.

Since 2005, while at Hangle, my clients have included public and private educational institutions and government bodies in matters involving special education, discipline, discrimination and governance; a mortgage insurance company in complex commercial disputes; a law firm in a copyright dispute; the Governor of Pennsylvania in a dispute over the passage of legislation; individuals and companies in a multi-jurisdictional dispute over a failed venture capital fund and a failed telecommunications company; and an Italian manufacturer in an international dispute over distribution rights of a pharmaceutical robot. I also have provided an expert report in litigation involving the tape recording of student/professor conversations at a prominent university.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

1994 – 2002: My first court appearances while I was an associate at Schnader were in the Philadelphia Court of Common Pleas discovery court. As I progressed through my career, I argued substantive motions in both state and federal court and also prepared and took cases to trial. My appearances in court were infrequent at first, becoming more frequent as I became more senior. During this time period my practice was almost 100% litigation.

2002 – 2005: As the General Counsel for the School District of Philadelphia, my duties did not allow me to personally represent my client in court. While I often attended court with my in-house and outside counsel, I relied on them to try cases and make arguments. During this time period about 35% of my time was spent strategizing about litigation matters and supervising a wide variety of litigation matters.

2005 – present: Since my return to private practice, I have appeared in court in a variety of jurisdictions for argument, for settlement purposes and for trial. The frequency of my appearances in court has decreased or increased depending on

my caseload and where each of my cases stands in the litigation process. In some months, I have appeared regularly in court for argument or trial. In other months, I have focused on brief writing, discovery and trial preparation. During this time period my practice has been about 95% litigation or pre-litigation counseling.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 50% |
| 2. state courts of record: | 48% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 2% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | 0% |

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate that I have tried at least six cases to verdict, judgment or final decision. I was chief counsel in one of those cases, co-chief counsel in another, associate counsel in one case, and sole counsel in three cases including one case for a magazine publication and one case for a charter school, each of which I tried before a panel of three arbitrators.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 16% |
| 2. non-jury: | 84% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case

was litigated; and

- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I have listed the cases below in reverse chronological order.

1. *American Home Mortgage Servicing, Inc. v. Radian Guaranty, Inc.*, Civ. A. No. 8:10-cv-01234-CJC-AGR (C.D. Cal.).

In 2011, I was retained by Radian Guaranty, Inc., a mortgage insurance company, to defend it in a dispute over the alleged wrongful cancellation of mortgage insurance certificates issued by Radian to insure certain residential mortgage loans serviced by American Home Mortgage Servicing, Inc., and held in trust by several banks as trustees of various securitizations. The cancelled insurance policies at issue were not traditional “borrower-paid” mortgage insurance policies often paid by homeowners who place less than 20% down when they purchase a home. Rather they were “Bulk Primary Lender Paid Mortgage Insurance Policies” used to insure a portfolio of residential mortgage backed securitizations, or “pools,” that are later sold to investors. After extensive negotiations, the case settled. I lead the team that litigated the matter and negotiated the settlement agreement that was reached on September 13, 2013.

The case was litigated in the central district of California before Hon. Cormac J. Carney.

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2. *United States v. Nobel Learning Communities, Inc.*, Civ. A. No. 09-1818 (E.D. Pa).

From 2009 to 2011, I represented Nobel Learning Communities, Inc. ("NLCI") in civil litigation brought by the United States Department of Justice alleging a pattern and practice of discrimination on the basis of disability at schools owned and operated by NLCI nationwide. The case concerned the application of the Americans with Disabilities Act to private schools in the context of a pattern and practice lawsuit. The Department of Justice sought wide-ranging relief, including damages and civil penalties, by way of claims covering children from preschool through grade 12 at NLCI facilities. In ruling on NLCI's motion to dismiss and opposition to the United States' subsequent motion to amend, the Court dismissed all claims related to schools other than preschools and dismissed all claims related to the parents or siblings of students. I led a team of lawyers, developed substantive and discovery strategy, took all depositions, developed, edited and argued all motions, worked closely with the client on all matters and engaged in an ultimately successful three-month settlement process guided by a federal magistrate judge.

The case was litigated in the eastern district of Pennsylvania before Hon. Mary A. McLaughlin.

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3. *Amana I v. Cairnwood Group, LLC*, Civ. A. No. 2006-CV-114931 (Super. Ct. Fulton County, Ga.); *Freeford Ltd. v. Pendleton*, Civ. A. Index No. 003652/2005 and Civ. A. Index No. 00276/2008 (N.Y. Sup. Ct.).

In this multi-jurisdictional litigation brought in 2006, I defended the former directors and managers of a venture capital technology fund and various corporate entities against fraud, RICO and conspiracy allegations arising from investments made, at the height of the Internet boom, in cutting-edge Internet technologies and in an Asian telecommunications company. Inter-connected lawsuits in Georgia, the Cayman Islands, Singapore and New York variously alleged fraudulent inducement, mismanagement and RICO violations and claimed over \$30 million in alleged damages. The cases involved complex international discovery, including document and deposition discovery in France, England, Senegal, the Cayman Islands and the United States. At times requiring interpretation under different countries' laws, the cases also presented a host of legal issues – among them issues of international jurisdiction, choice of forum, service, due diligence, agency, RICO and fiduciary duty.

I coordinated parties and counsel located in Boston, New York, Pennsylvania, Atlanta, the Cayman Islands, London, Paris, Senegal and Singapore as well as being engaged in a leading role in all phases of litigation including document discovery, depositions, motion practice, argument, expert reports, mock trial and

trial preparation. The Cayman case settled early in the litigation, and the New York and Georgia cases settled in April 2010.

The cases were litigated in Georgia in Georgia's superior court, Fulton County, before Hon. Alice D. Bonner and in New York in New York's supreme court before Hon. Helen E. Freedman.

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4. *Common Cause v. Pennsylvania*, Civ. A. No. 1:05-CV-2036, 447 F. Supp. 2d 415 (M.D. Pa. 2006), *aff'd*, 558 F.3d 249 (3d Cir. 2009), *cert. denied*, 2009 U.S. LEXIS 9087 (U.S. 2009).

In 2006, I represented the Governor of Pennsylvania in litigation brought in the United States District Court for the Middle District of Pennsylvania against him, the Chief Justice of Pennsylvania and numerous Pennsylvania legislators. The case challenged the constitutionality of Act 44, a statute which had increased the compensation of members of the General Assembly, all judges of the Commonwealth of Pennsylvania, and many public officers of the Executive Branch. I developed the legal theories for and edited an initial draft of a motion to dismiss, which contended that the matter must be dismissed for numerous reasons, including because the plaintiffs had no standing to bring the suit, because the case was moot, and because, even if they did and it was not, the plaintiffs had not and could not state a claim against the Governor. I argued the motion on behalf of the Governor on May 19, 2006. Shortly thereafter Judge Yvette Kane issued an opinion dismissing the case. Her opinion was upheld on appeal by the Third Circuit in an opinion dated February 26, 2009.

This case was litigated in the Middle District of Pennsylvania before Hon. Yvette Kane.

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C. Clark Hodgson, Jr. (deceased)

Amanda L. Smith
Associate Professor
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3800 Vartan Way
P.O. Box 69380
Harrisburg, PA 17106
Tel: (717) 541-3946

Daniel J. Doyle
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James F. Tierney, IV
Eugene F. Hickey, II
Cipriani & Werner, P.C.
Suite 210, Oppenheim Building
408 Lackawanna Avenue
Scranton, PA 18503
Tel: (570) 347-0600

Patrick Heffron (former Cipriani partner)
The Connell Building
125 North Washington Avenue, Suite 240
Scranton, PA 18503
Tel: (570) 558 4820

Linda J. Shorey
Amy L. Groff
Kirkpatrick & Lockhart Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101
Tel: (717) 231-4500

Opposing Counsel:

Paul Anthony Rossi
316 Hill Street
Mountville, PA 17554
Tel: (717) 330-8872

5. *Pennsylvania v. Chester Upland School District*, No. 496 M.D. 2005 (Pa. Commw. Ct.).

In 2005, I represented the Pennsylvania Department of Education in an action which sought to have the Chester Upland School District placed into receivership on the grounds that the governing body of the district had mismanaged the financial affairs of the district, had paid insufficient attention to the educational needs of the children and had failed to fulfill various statutory mandates. I drafted motions, conducted discovery, and served as co-counsel in the trial of the matter – preparing, examining and cross-examining witnesses. After a multi-day bench trial, the court put the Secretary of Education into place as receiver pendente lite of the district. The matter continued through the courts in various iterations until December 27, 2007. See *Pennsylvania v. Empowerment Bd. of Control of Chester-Upland School Dist.*, 938 A.2d 1000 (Pa. 2007).

This case was litigated in the commonwealth court of Pennsylvania before Hon. James Gardner Collins.

Co-Counsel:

Joseph Dworetzky
Hangley Aronchick Segal Pudlin & Schiller
One Logan Square, 27th Floor
Philadelphia PA 19103
Tel: (215) 568-6200

Zachary Davis (former Hangley associate)
Stevens & Lee
1818 Market Street, 29th Floor
Philadelphia, PA 19103
Tel: (215) 751-2874

Baruch Kintisch (formerly of Education Law Center)
Pathway Strategies, LLC
P.O. Box 30289
Tel: (215) 837-2499

Opposing Counsel:

John P. Krill
Linda J. Shorey
Anthony Holtzman
Kirkpatrick & Lockhart Nicholson Graham LLP
17th North Second Street, 18th Floor
Harrisburg, PA 17101
Tel: (717) 231-4501

Leo Hackett
Law Offices of Leo A. Hackett
300 West State Street
Suite 301
Media, PA 19063
Tel: (610) 565-7700

6. *Moore v. Radian Group, Inc.*, Civ. A. No. 2:01-cv-23 (E.D. Tex.).

In 2002, I represented Radian Group, Inc., a provider of private mortgage insurance, in a case in which mortgagors sought class action status on allegations that certain relationships between Radian and lenders violated the Real Estate Settlement Practices Act (RESPA). More specifically, the plaintiffs alleged that Radian violated RESPA by providing kickbacks in the form of, *inter alia*, low

cost pool insurance to lenders in return for the lenders referring to Radian primary mortgage insurance business. I led the discovery process – taking depositions and drafting multiple discovery motions. I also developed an argument for a motion to dismiss on the theory that the plaintiffs lacked standing. The court granted the motion which the Fifth Circuit affirmed on appeal in May 2003.

This case was litigated in the Eastern District of Texas before Hon. T. John Ward.

Co-Counsel:

David Smith
Schnader Harrison Segal & Lewis LLP
1600 Market Street
Philadelphia, PA 19103
Tel: (215) 751-2190

Robert Mowrey
Tom Yoxall
Locke Lord LLP
2200 Ross Avenue
Suite 2200
Dallas, TX 75201
Tel: (214) 740-8000

Opposing Counsel:

Michael B. Angelovich
Nix, Patterson & Roach, LLP
2900 Saint Michael Drive, Fifth Floor
Texarkana, TX 75503
Tel: (903) 223-3999

Von Packard
Lon Packard
Ronald Packard
Daniel Packard
Packard, Packard & Johnson
Four Main Street, Suite 200
Los Altos, CA 94022-2902
Tel: (650) 947-7300

7. *Franklin Farms v. Blue Mountain Mushroom Co. Inc.*, Civ. A. No. 2:99-cv-03512 (E.D. Pa.).

In 1999, I was retained to represent Franklin Farms, Inc., in a dispute with a joint venture partner over the use of leased facilities and a mushroom cooler. I sought

and obtained a temporary restraining order and then, after trial, a preliminary injunction prohibiting the partner from interfering with my client's use of the building and of the cooler. The matter settled shortly thereafter.

Opposing Counsel:

Dale E. Lapp
(deceased)

The matter was litigated in the Eastern District of Pennsylvania before Hon. Harvey Bartle, III.

8. *Liedman v. Philadelphia Magazine*, No. 970601440 (Phila. Ct. of Common Pleas) (Arbitration Center).

In March 1998, I tried and won an arbitration in the Philadelphia Court of Common Pleas in a defamation action in which Mr. Liedman, a former employee of the 76ers, sued the 76ers, Mr. Croce and Philadelphia Magazine. Philadelphia Magazine had published an article about Mr. Croce in which it made an allegedly defamatory reference to Mr. Liedman. The matter was assigned to arbitration in the Philadelphia Arbitration Center. I represented Philadelphia Magazine, while the 76ers and Mr. Croce were represented by another law firm. I tried the case before a panel of arbitrators who decided in my client's favor. (I do not recall the names of the arbitrators.)

Co-Counsel (for 76ers and Pat Croce):

Stephen A. Cozen
Thomas G. Wilkinson Jr.
Cozen & O'Conner
1900 Market Street
Philadelphia, PA 19103
Tel: (215) 665-2000

Opposing Counsel:

Sol Weiss
Anapol Schwartz
1710 Spruce Street
Philadelphia, PA 19103
Tel: (215) 875-7701

9. *Paul v. Philadelphia Magazine*, No. 970401552 (Phila. Ct. of Common Pleas).

In April 1997, Mr. Paul, a partner in a law firm and a prospective mayoral candidate, sued Philadelphia Magazine for defamation over a section of an article

in which the reporter had quoted City Councilman Rizzo as referring to Mr. Paul as “a slip and fall lawyer running for Mayor.” Mr. Paul contended that the term “slip and fall” was derogatory and was akin to being called an ambulance chaser or a shyster. I prepared the case on behalf of Philadelphia Magazine through discovery and pre-trial motions then second-chaired the jury trial. On June 15, 1998, at the close of the plaintiff’s case, the judge granted Philadelphia Magazine’s motion for compulsory non-suit on the theory that the statement was not capable of defamatory meaning.

This case was litigated in the Philadelphia court of common pleas before Judge Myrna Field.

Co-Counsel:

Carl Solano
Schnader Harrison Segal & Lewis LLP
1600 Market Street
Philadelphia, PA 19103
Tel: (215) 751-2202

Alan Lieberman (former Schnader partner)
U.S. Securities and Exchange Commission
Division of Enforcement.
600 New Jersey Avenue, NW
Washington, DC 20001
Tel: (202) 551-4474

Opposing Counsel:

Benjamin Paul (deceased)
(Pro Se)

Mona S. Picciotto
(current business address unknown)

10. *Wesoloskie v. Phoenix Management Services, Inc.* No. 960902849
(Philadelphia Court of Common Pleas)

From 1996 to 1998, I represented Phoenix Management Services Inc., whose principal, while serving as interim manager of the Philadelphia Gas Works (PGW), had fired a number of workers following a forensic investigation that revealed defalcations in one of PGW’s departments. Mr. Wesoloskie, one of the workers who was fired, sued Phoenix Management claiming that statements made during the investigation about him were defamatory. I had sole responsibility for the file with strategic input from a senior partner. I conducted all discovery, including taking depositions and arguing several discovery motions, attending

settlement conferences and communicating with the client where appropriate. I also had sole responsibility in preparing the case for trial. The case was settled during jury selection on the morning of trial for a minimal amount.

The matter was litigated before Hon. Bernard J. Goodheart of the Philadelphia court of common pleas.

Co-Counsel:

William H. Brown
Schnader Harrison Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 751-2434

Opposing Counsel:

Ronald H. Surkin
Gallagher, Schoenfeld, Surkin, Chupein & DeMis. P.C.
26 West Second Street
Media, PA 19063
Tel: (610) 565-4600

- 18. Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Milestone Partners: Learn-It acquisition

In 2010, I was hired to represent Milestone Partners, a venture capital firm, in its acquisition of an education company called Learn-It Systems LLC. Learn-It was an educational services company which provided customized supplemental education services targeting underperforming students in grades K through 12. It had a broad reach – providing services across 23 states and two U.S. territories and Puerto Rico and encompassing over 24,000 students in approximately 400 schools. I developed a due diligence plan for the acquisition and executed that plan.

Education matters

While at Hangley, I have represented education entities in a variety of matters. I have worked with private schools to establish a protocol for them to work with children with special needs. I have represented charter schools in a number of matters including a

revocation hearing, discrimination lawsuits, special education due process hearings and a breach of contract action brought by a food service provider. I also have represented a number of students challenging a variety of actions by their colleges. I have represented an E-rate consultant in a request for information from the special compliance review team of the USAC Schools and Libraries Division. I advised the School District of Philadelphia on ways to improve the provision of special education to students who are in residential facilities and also on how to save money on transportation costs.

I have not performed lobbying activities for any client or organization.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I taught Public Education Law at the University of Pennsylvania Law School in the Winter Term 2005 semester. The course examined the legal underpinnings of the development of public education in the United States and examined the role and impact of law on public education today. Syllabus supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

As required by my firm, I have made contributions to a capital account. Upon my resignation from my law firm any money I have paid into the capital account plus interest would be reimbursed to me.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Any potential conflicts of interest I can foresee concern cases currently being handled by my law firm Hangley Aronchick Segal Pudlin & Schiller, cases which have been brought by any of the entities on whose boards I currently sit, or cases involving parties in which I have a financial interest through my retirement account or the stock portfolio I hold with my husband. I would handle all matters concerning recusal by consulting the rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges. In close cases, I also would consult other judges and any person designated by the court or judicial organizations to provide advice on such questions as they arise.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In resolving any potential conflict of interest, I would consult the rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges and, as necessary, will consult other judges and any person designated by the court or judicial organizations to assist with such matters. Based on such sources, I would compile a list of potential conflicts of interests.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In the past six years I have spent a considerable amount of time as a member of the Board of Trustees of The Philadelphia Bar Foundation in a variety of roles. The Philadelphia Bar Foundation is an organization which is dedicated to promoting access to justice for those who cannot afford it. It accomplishes this mission by providing grants and technical assistance in support of quality legal services, addressing unmet legal needs and providing education on matters in the public interest.

Apart from my work with the Foundation, I have taken on pro bono representations involving prisoner's civil rights, assisted a woman in adopting her foster child, assisted a homeless man and his child who had lost their birth certificates to obtain new ones, and, through the New Jersey courts pro bono requirements, represented a prisoner in his parole violation hearing.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On June 28, 2011, I submitted my application to Senators Casey and Toomey for consideration to be nominated for the position of United States District Judge for the Eastern District of Pennsylvania. On November 4, 2011, I was interviewed by the Judicial Nomination Advisory Panel for the Eastern District of Pennsylvania in Philadelphia, Pennsylvania. In January 2013, I informed the Senators of my continued interest in serving as a district court judge. On March 7, 2013, I provided the Advisory Panel with additional pertinent information since my initial application. On August 6, 2013, I received a call from Senator Casey's office advising me that the Senator intended to recommend me to fill one of the vacancies in the Eastern District of Pennsylvania. Since August 7, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 24, 2013, I met with Senator Toomey in Washington D.C. On January 29, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 16, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2013

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) BEETLESTONE, WENDY	2. Court or Organization U.S. DISTRICT COURT - EDPA	3. Date of Report 06/16/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. DISTRICT JUDGE - ACTIVE	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 6/16/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Actual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 6/10/2014
7. Chambers or Office Address ONE LOGAN SQUARE, 27TH FLOOR PHILADELPHIA, PA 19129		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. SHAREHOLDER	HANGLEY ARONCHICK SEGAL PUDLIN & SCHILLER
2. MEMBER	STATE BOARD OF EDUCATION, COMMONWEALTH OF PA (COUNCIL FOR HIGHER EDUCATION)
3. MEMBER	STATE BOARD FOR VOCATIONAL EDUCATION, COMMONWEALTH OF PA
4. BOARD OF TRUSTEES	PHILADELPHIA UNIVERSITY
5. BOARD OF TRUSTEES	PHILADELPHIA BAR FOUNDATION

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

A. Filer's Non-Investment Income

☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2014	HANGLEY ARONCHICK SEGAL PUDLIN & SCHILLER - SALARY	\$51,977.00
2. 2013	HANGLEY ARONCHICK SEGAL PUDLIN & SCHILLER - SALARY	\$547,535.00
3. 2012	HANGLEY ARONCHICK SEGAL PUDLIN & SCHILLER - SALARY	\$425,072.00
4.		

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, complete this section.

(Dollar amount not required except for honoraria.)

☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2014	SELF-EMPLOYED PHYSICIAN
2. 2014	OPPENHEIMER & CO, INC - PENSION
3. 2014	TEACHERS INSURANCE AND ANNUITY ASSOCIATION - PENSION
4. 2014	THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA - SALARY
5. 2013	OPPENHEIMER & CO, INC - PENSION
6. 2013	TEACHERS INSURANCE AND ANNUITY ASSOCIATION - PENSION
7. 2013	THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA - SALARY
8. 2013	SELF-EMPLOYED PHYSICIAN

IV. REIMBURSEMENTS - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE (No reportable reimbursements.)

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. EXEMPT				
2.				
3.				

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Name of Person Reporting	Date of Report
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4. _____

5. _____

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Name of Person Reporting	Date of Report
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V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code I (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code I (A-H)	Identity of buyer/seller (if private transaction)
1. WELLS FARGO - CASH ACCOUNT	A	Int./Div.	K	T					
2. PNC BANK CASH ACCOUNTS	A	Int./Div.	M	T					
3. HANGLEY ARONCHICK SEGAL PUDLIN & SCHILLER CAPITAL ACCOUNT	A	Int./Div.	K	T					
4. BROKERAGE ACCOUNT #1		None							
5. -ADVANTAGE BANK ACCOUNTS	A	Dividend	N	T					
6. -AKZO NOBEL N.V.(ADR)	A	Int./Div.	K	T					
7. -AMERICAN MOVIL S.A.B. DE C.V. (ADR)	A	Dividend	K	T					
8. -AQUA AMERICA INC	A	Dividend	J	T					
9. -BOEING CO.	A	Dividend	J	T					
10. -BP PLC (ADR)	A	Dividend	J	T					
11. -CHEVRON CORP	B	Dividend	K	T					
12. -ENI SPA (ADR)	B	Dividend	K	T					
13. -EXXON MOBIL CORP	B	Dividend	K	T					
14. -GENERAL ELECTRIC CO.	A	Dividend	K	T					
15. -INTEL CORP	A	Dividend	J	T					
16. -ISHARES MSCI SOUTH AFRICA INDEX ETF	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$1,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$15,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P = \$250,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessed W = Estimated	T = Cash Market	

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
17. -KONINKLIJKE PHILIPS NV (ADR)	A	Dividend	J	T					
18. -MARATHON OIL CORP	A	Dividend	K	T					
19. -MARATHON PETROLEUM CORP	A	Dividend	K	T					
20. -OCCIDENTAL PETROLEUM CORP	B	Dividend	L	T					
21. -QUALCOMM INC.	A	Dividend	J	T					
22. -RIO TINTO PLC (ADR)	A	Dividend	K	T					
23. -SANDISK CORP	A	Dividend	J	T					
24. -SANTO LIMITED (ADR)	A	Dividend	J	T					
25. -SIEMENS AG (ADR)	A	Dividend	J	T					
26. -SOUTHERN COPPER CORP.	A	Dividend	J	T					
27. -TEXAS INSTRUMENTS INC.	A	Dividend	J	T					
28. -TOTAL SA (ADR)	B	Dividend	K	T					
29. -VERIZON COMM.	A	Dividend	J	T					
30. -WOODSIDE PETROLEUM LTD	B	Dividend	K	T					
31. BROKERAGE ACCOUNT #2		None							
32. -ALLIANCE RES PART LP UT LTD	A	Dividend	L	T					
33. -ATLAS ENERGY LP	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 O = \$100,001 - \$100,000 K = \$15,001 - \$50,000 Q = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 I1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
34. -ATLAS RESOURCES PART LP	A	Dividend	J	T					
35. -ADVANTAGE BANK ACCOUNTS	A	Dividend	M	T					
36. -AMERICAN WATER WORKS CO.	A	Dividend	K	T					
37. -ANADARKO PETROLEUM CORP	A	Dividend	K	T					
38. -ANGLO AMERICAN PLC (ADR)	A	Dividend	J	T					
39. -APACHE CORP	A	Dividend	K	T					
40. -ARCH COAL INC	A	Dividend	J	T					
41. -BARRICK GOLD CORP.	A	Dividend	J	T					
42. -BHP BILLITON LTD (ADR)	B	Dividend	K	T					
43. -BOEING CO.	A	Dividend	K	T					
44. -BP PLC (ADR)	D	Dividend	M	T					
45. -BOARDWALK PIPELINE PART LP	A	Distribution	J	T					
46. -BREITBURN ENERGY PART LP	A	Dividend	J	T					
47. -BUCKEYE PART LP	B	Distribution	K	T					
48. -CALIFORNIA WATER SERVICE GROUP	A	Dividend	K	T					
49. -CANADIAN NATURAL RESOURCES LTD	A	Dividend	J	T					
50. -CARRIZO OIL & GAS INC		None	J	T					

1. Income Gain Codes:

(See Columns B1 and D4)

2. Value Codes

(See Columns C1 and D3)

3. Value Method Codes

(See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,000 or less

N = \$250,001 - \$500,000

P3 = \$25,000,001 - \$50,000,000

Q = Appraisal

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

I1 = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

H2 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
51. -CHESAPEAKE ENERGY CORP	A	Dividend	J	T					
52. -CHEVRON CORP	D	Dividend	M	T					
53. -CHINA PETROLEUM & CHEMICAL CORP (ADR)	B	Dividend	K	T					
54. -CNOOC LTD (ADR)	B	Dividend	L	T					
55. -COMPANIA DE MINAS BUENAVENTURA S.A.A.	A	Dividend	J	T					
56. -CONOCO PHILLIPS	D	Dividend	M	T					
57. -CPFL ENERGIA S.A. (ADR)	A	Dividend	K	T					
58. -CRESTWOOD EQUITY PARTNERS LP	A	Distribution	J	T					
59. -CRESTWOOD MIDSTREAM PART LP	A	Distribution	J	T					
60. -DCP MIDSTREAM PART LP	A	Dividend	K	T					
61. -DUPONT EI DE NEMOURS & CO	A	Dividend	J	T					
62. -ECOPETROL S.A. (ADR)	A	Dividend	J	T					
63. -EV ENERGY PART LP	A	Dividend	K	T					
64. -ENBRIDGE ENERGY PART LP	A	Dividend	K	T					
65. -ENERGY TRANSFER PART LP	A	Dividend	K	T					
66. -ENERGY TRANSFER EQUITY LP	C	Distribution	K	T					
67. -ENTERPRISE PRODUCTS PARTNERS, LP	C	Distribution	M	T					

1. Income Gain Codes:

(See Columns B1 and D4)

2. Value Codes

(See Columns C1 and D3)

3. Value Method Codes

(See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,000 or less

N = \$250,001 - \$500,000

P3 = \$25,000,001 - \$50,000,000

Q = Appraisal

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

I11 = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

I12 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
68. -ENBRIDGE INC.	A	Dividend	J	T					
69. -ENERPLUS CORP	A	Dividend	J	T					
70. -ENI SPA (ADR)	D	Dividend	M	T					
71. -EXXON MOBIL CORP.	D	Dividend	N	T					
72. -FIRST QUANTUM MINERAL LTD.	A	Dividend	J	T					
73. -FREEPORT MCMORAN COPPER & GOLD INC.	A	Dividend	J	T					
74. -GAZPROM OAO (ADR)	A	Dividend	K	T					
75. -GENERAL ELECTRIC CO.	A	Dividend	J	T					
76. -GENESIS ENERGY LP	A	Dividend	K	T					
77. -GLENORE XSTRATA PLC	A	Dividend	K	T					
78. -GOLDCORP INC	A	Dividend	J	T					
79. -HARMONY GOLD MININ CO. (ADR)	A	Dividend	J	T					
80. -HESS CORP.	B	Dividend	M	T					
81. -HOLLY ENERGY PART LP	A	Distribution	J	T					
82. -HUNTINGTON INGALLS INDUSTRIES, INC	A	Dividend	J	T					
83. -HUSKY ENERGY, INC	A	Dividend	J	T					
84. -LYNAS CORP LTD SPON ADR		None	J	T					

1. Income Gain Codes (See Columns B1 and D4)
 2. Value Codes (See Columns C1 and D3)
 3. Value Method Codes (See Column C2)
- A = \$1,000 or less
 F = \$50,001 - \$100,000
 J = \$15,000 or less
 N = \$250,001 - \$500,000
 P3 = \$25,000,001 - \$50,000,000
 Q = Appraisal
 U = Book Value
- B = \$1,001 - \$2,500
 G = \$100,001 - \$1,000,000
 K = \$15,001 - \$50,000
 O = \$500,001 - \$1,000,000
 R = Cost (Real Estate Only)
 V = Other
- C = \$2,501 - \$5,000
 H11 = \$1,000,001 - \$5,000,000
 L = \$50,001 - \$100,000
 P1 = \$1,000,001 - \$5,000,000
 P4 = More than \$50,000,000
 S = Assessed
 W = Estimated
- D = \$5,001 - \$15,000
 H2 = More than \$5,000,000
 M = \$100,001 - \$250,000
 P2 = \$5,000,001 - \$25,000,000
 T = Cash Market
- E = \$15,001 - \$50,000

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-66 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	Place "X" after each asset exempt from prior disclosure								
85. -LUNDIN MINING CORP		None	J	T					
86. -INTEL CORP	A	Dividend	J	T					
87. -ISHARES MSCI SOUTH KOREA INDEX FUND (ETF)	A	Dividend	J	T					
88. -JP MORGAN CHASE & CO	A	Dividend	J	T					
89. -KINDER MORGAN ENERGY PARTNERS, LP	B	Dividend	L	T					
90. -LEGACY RESERVES, LP	A	Distribution	J	T					
91. -LINN ENERGY LLC	B	Distribution	K	T					
92. -LINNCO LLC	A	Dividend	J	T					
93. -MAGELLAN MIDSTREAM PARTNERS, LP	B	Distribution	L	T					
94. -MARATHON OIL CORP.	B	Dividend	M	T					
95. -MARATHON PETROLEUM CORP.	C	Dividend	M	T					
96. -MARKETWEST ENERGY PARTNERS, LP	B	Distribution	K	T					
97. -MIDDLESEX WATER, CO	A	Dividend	J	T					
98. -MURPHY OIL CORP	A	Dividend	J	T					
99. -MURPHY USA INC.	A	Distribution	J	T					
100. -NATIONAL GRID PLC (ADR)	B	Dividend	K	T					
101. -NATIONAL OILWELL VARCO INC.	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
 2. Value Codes (See Columns C1 and D3)
 3. Value Method Codes (See Column C2)

A = \$1,000 or less
 F = \$50,001 - \$100,000
 N = \$250,001 - \$500,000
 Q = Appraisal
 U = Book Value

B = \$1,001 - \$2,500
 G = \$100,001 - \$1,000,000
 K = \$15,001 - \$50,000
 O = \$500,001 - \$1,000,000
 R = Cost (Real Estate Only)
 V = Other

C = \$2,501 - \$5,000
 H = \$1,000,001 - \$5,000,000
 L = \$50,001 - \$100,000
 P1 = \$1,000,001 - \$5,000,000
 P4 = More than \$50,000,000
 S = Assessment
 W = Estimated

D = \$5,001 - \$15,000
 I2 = More than \$5,000,000
 M = \$100,001 - \$250,000
 P2 = \$5,000,001 - \$25,000,000
 T = Cash Market

E = \$15,001 - \$50,000

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
102. -NEWCREST MINING LTD (ADR)	A	Dividend	J	T					
103. -NEWMONT MINING CORP	A	Dividend	J	T					
104. -NORTHROP GRUMMAN CORP	A	Dividend	K	T					
105. -NOW INC	A	Dividend	J	T					
106. -NUCOR CORP	A	Dividend	J	T					
107. -NUSTAR ENERGY, LP	A	Distribution	J	T					
108. -OCCIDENTAL PETROLEUM CORP	C	Dividend	M	T					
109. -OIL CO LUKOIL SPON ADR	A	Dividend	J	T					
110. -OCEANEERING INTERNATION INC	A	Dividend	K	T					
111. -OJSC OC ROSNEFT (GDR)	B	Dividend	K	T					
112. -OMV AG (ADR)	A	Dividend	J	T					
113. -ONEOK PARTNERS, LP	A	Distribution	L	T					
114. -OSCIENT PHARMACEUTICAL CORP		None	J	T					
115. -PAN AMERICAN SILVER CORP	A	Dividend	J	T					
116. -PEABODY ENERGY CORP	A	Dividend	J	T					
117. -PETROCHINA CO LTD (ADR)	B	Dividend	K	T					
118. -PETROLEO BRASILEIRO S.A. PETROBRAS (ADR)	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$30,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 C = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$300,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 I11 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I12 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	U = Book Value				

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-49 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
119. -PETROLEO BRASILEIRO PETROBR SPON ADR	A	Dividend	J	T					
120. -PHILLIPS 66	B	Dividend	M	T					
121. -PIONEER NATURAL RESOURCES	A	Distribution	J	T					
122. -PLAINS ALL AMERICAN PIPELINE, LP	B	Distribution	L	T					
123. -POLSKI KONCERN NAFTOWY ORIENTL SPON ADR	A	Dividend	J	T					
124. -QEP RESOURCES INC.	A	Dividend	J	T					
125. -RANDGOLD RESOURCES LTD (ADR)	A	Dividend	J	T					
126. -REGENCY ENERGY PARTNERS, LP	B	Distribution	K	T					
127. -RELiance INDUSTRIES LTD (GDR)	A	Dividend	J	T					
128. -REPSOL S.A. (ADR)	B	Dividend	L	T					
129. -RIO TINTO PLC (ADR)	B	Dividend	K	T					
130. -ROYAL DUTCH SHELL PLC (ADR) B	C	Dividend	K	T					
131. -ROYAL DUTCH SHELL PLC SPON ADR A	A	Dividend	N	T					
132. -SANTOS LIMITED (ADR)	A	Dividend	J	T					
133. -SASOL LIMITED (ADR)	D	Dividend	M	T					
134. -SCHLUMBERGER LTD	A	Dividend	K	T					
135. -SCHNITZER STEEL INDUSTRIES	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 I11 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I12 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
136. -SIEMENS AG (ADR)	B	Dividend	K	T					
137. -SILVER WHEATON CORP	A	Dividend	J	T					
138. -SINOPEC SHANGHAI PETROCHEMICAL CO (ADR)	A	Dividend	J	T					
139. -SOUTHERN COPPER CORP.	A	Dividend	K	T					
140. -SPECTRA ENERGY PARTNERS, LP	A	Distribution	J	T					
141. -SUBURBAN PROPANE PARTNERS, LP	A	Distribution	J	T					
142. -TALISMAN ENERGY INC.	A	Dividend	J	T					
143. -TARGA RESOURCES PARTNERS, LP	B	Distribution	K	T					
144. -TATA MOTORS LTD (ADR)	A	Dividend	J	T					
145. -TC PIPELINE, LP	A	Distribution	J	T					
146. -TECK RESOURCES, LTD	A	Dividend	J	T					
147. -TECO ENERGY INC	A	Dividend	J	T					
148. -TEMPLETON EMERGING MARKETS INCOME FUND	A	Dividend	J	T					
149. -TENARIS S.A. (ADR)	A	Dividend	J	T					
150. -THE INDIA FUND, INC	B	Dividend	K	T					
151. -TRANSCANADA CORP.	B	Dividend	K	T					
152. -TRANSMONTAIGNE PARTNERS, LP	A	Dividend	K	T					

1. Income Gain Codes:

(See Columns B1 and D4)

2. Value Codes

(See Columns C1 and D3)

3. Value Method Codes

(See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,001 - \$50,000

N = \$250,001 - \$500,000

P3 = \$25,000,001 - \$50,000,000

Q = Appraisal

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

I1 = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

I2 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
153. -TURQUOISE HILL RESOURCES LTD		None	J	T					
154. -VANGUARD NATURAL RESOURCES LLC	A	Dividend	K	T					
155. IRA #1	C	Distribution	M	T					
156. -ADVANTAGE BANK ACCOUNTS									
157. -FIRST EAGLE GLOBAL FUND									
158. TRUST #1	A	Int./Div.	O	T					
159. -ADVANTAGE BANK ACCOUNTS									
160. -AMAZON INC									
161. -AMERICAN EXPRESS CO									
162. -CA INC									
163. -CATERPILLAR INC									
164. -CHUBB CORP									
165. -COCA COLA CO									
166. -COMCAST CORP									
167. -DIRECTV									
168. -DISCOVER COMM NEW COM SER A									
169. -DISCOVER COMM NEW COM SER C									

1. Income Gain Codes:

(See Columns B1 and D4)

2. Value Codes

(See Columns C1 and D3)

3. Value Method Codes

(See Column C2)

A ~\$1,000 or less

F ~\$50,001 - \$100,000

J ~\$15,000 or less

N ~\$250,001 - \$500,000

P3 ~\$25,000,001 - \$50,000,000

Q =Appraisal

U =Book Value

B ~\$1,001 - \$2,500

G ~\$100,001 - \$1,000,000

K ~\$15,001 - \$50,000

O ~\$500,001 - \$1,000,000

R =Cost (Real Estate Only)

V =Other

C ~\$2,501 - \$5,000

H ~\$1,000,001 - \$5,000,000

L ~\$50,001 - \$100,000

P1 ~\$1,000,001 - \$5,000,000

P4 ~More than \$50,000,000

S =Assessment

W =Estimated

D ~\$5,001 - \$15,000

I12 ~More than \$5,000,000

M ~\$1,000,001 - \$250,000

P2 ~\$5,000,001 - \$25,000,000

T =Cash Marker

E ~\$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
170. -E.I. DUPONT DE NEMOURS & CO.									
171. -EBAY INC.									
172. -EMERSON ELECTRIC CO									
173. -ENI SPA (ADR)									
174. -EXPEDIA INC									
175. -EXXON MOBIL CORP									
176. -GAZPROM OAO (ADR)									
177. -GENERAL ELECTRIC CO									
178. -HESS CORP									
179. -IMPERIAL OIL LTD									
180. -INTEL CORP									
181. -JP MORGAN CHASE & CO									
182. -KIMBERLY CLARK CORP									
183. -KRAFT FOODS GROUP INC									
184. -LIBERTY INTERACTIVE CORP									
185. -LIBERTY MEDIA CORP									
186. -MICROSOFT CORP									

1. Income Gain Codes: (See Columns B1 and D4)
 2. Value Codes (See Columns C1 and D3)
 3. Value Method Codes (See Column C2)

A = \$1,000 or less
 F = \$50,001 - \$100,000
 J = \$15,000 or less
 N = \$250,001 - \$500,000
 P3 = \$25,000,001 - \$50,000,000
 Q = Appraisal
 U = Book Value

B = \$1,001 - \$2,500
 G = \$100,001 - \$1,000,000
 K = \$15,001 - \$50,000
 O = \$500,001 - \$1,000,000
 R = Cost (Roll Estate Only)
 V = Other

C = \$2,501 - \$5,000
 H = \$1,000,001 - \$5,000,000
 L = \$50,001 - \$100,000
 P1 = \$1,000,001 - \$5,000,000
 P4 = More than \$50,000,000
 S = Assessment
 W = Estimated

D = \$5,001 - \$15,000
 H2 = More than \$5,000,000
 M = \$100,001 - \$250,000
 P2 = \$5,000,001 - \$25,000,000
 T = Cash Market

E = \$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.) (J-P)	Value Code 2 (J-P)	Value Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
187. -MONDELEZ INC									
188. -NEWS CORP									
189. -OCCIDENTAL PETROLEUM CORP									
190. -PALL CORP									
191. -PEPSICO INC									
192. -PROCTOR & GAMBLE CO									
193. -RAYTHON CO.									
194. -REPSOL S.A. (ADR)									
195. -RIO TINTO PLC (ADR)									
196. -ROYAL DUTCH SHELL PLC (ADR)									
197. -SANTOS LTD (ADR)									
198. -SOUTHERN COPPER CORP									
199. -TAIWAN SEMICONDUCTOR MANUFACTURING CO. LTD (ADR)									
200. -TEXAS INSTRUMENTS INC									
201. -TIME INC NEW									
202. -TIME WARNER INC									
203. -TOTAL S.A. (ADR)									

 1. Income Gtin Codes:
 (See Columns B) and D4)

 2. Value Codes:
 (See Columns C) and D3)

 3. Value Method Codes:
 (See Column C2)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,000 or less

N = \$250,001 - \$500,000

P1 = \$25,000,001 - \$50,000,000

Q = Appraisal

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

H = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

I2 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS -- Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
204. -TWENTY-FIRST CENTURY FOX INC									
205. -WAL-MART STORES, INC									
206. -WALT DISNEY CO									
207. -WEYERHAEUSER CO									
208. TRUST #2	D	Int./Div.	N	T					
209. -ADVANTAGE BANK ACCOUNTS									
210. -CHEVRON CORP									
211. -CONOCO PHILLIPS									
212. -ENI SPA (ADR)									
213. -EXXON MOBIL CORP									
214. -FREEPORT MCMORAN COPPER & GOLD INC									
215. -HESS CORP									
216. -IMPERIAL OIL LTD									
217. -MARATHON OIL CORP									
218. -MARATHON PETROLEUM CORP									
219. -OCCIDENTAL PETROLEUM CORP									
220. -PHILLIPS 66									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessments W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
221. -RELiance INFRASTRUCTURE LTD (GDR)									
222. -ROYAL DUTCH SHELL PLC (ADR)									
223. -SASOL LIMITED (ADR)									
224. -TOTAL S.A. (ADR)									
225. 401(k) #1	A	Int./Div.	O	T					
226. -ALGER SMID CAP GROWTH FUND									
227. -EATON VANCE ATLANTA CAP SMID - CAP FUND									
228. -FIDELITY CASH RESERVES									
229. -FIDELITY CONTRAFUND									
230. -FIRST EAGLE OVERSEAS FUND									
231. -HARDING LOEVNER INTERNATIONAL EQUITY PORTFOLIO									
232. -JP MORGAN INCOME BUILDER FUND									
233. -LOOMIS SAYLES BOND FUND									
234. -MUTUAL GLOBAL DISCOVERY FUND									
235. -SPDR S&P DIVIDEND ETF									
236. 403(b) #1	A	Int./Div.	O	T					
237. -VANGUARD WELLINGTON FUND									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I12 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Bank Value				

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
238. --VANGUARD PRIMECAP FUND									
239. --VANGUARD TARGET RETIREMENT 2025 FUND									
240. 403(b) #2	A	Int./Div.	PI	T					
241. --CREF STOCK									
242. --TIAA TRADITIONAL									
243. --CREF GLOBAL EQUITIES									
244. --TIAA-CREF INTERNATIONAL EQUITY FUND									
245. --TIAA-CREF REAL ESTATE									
246.									
247.									

1. Income Code Codes:
(See Columns B1 and D4)
2. Value Codes
(See Columns C1 and D3)
3. Value Method Codes
(See Column C2)
- A = \$1,000 or less
F = \$50,001 - \$100,000
J = \$15,000 or less
N = \$250,001 - \$500,000
P1 = \$25,000,001 - \$50,000,000
Q = Appraisal
U = Book Value
- B = \$1,001 - \$2,500
G = \$100,001 - \$1,000,000
K = \$15,001 - \$50,000
O = \$500,001 - \$1,000,000
R = Cost (Real Estate Only)
V = Other
- C = \$2,501 - \$5,000
H = \$1,000,001 - \$5,000,000
L = \$50,001 - \$100,000
P1 = \$1,000,001 - \$5,000,000
P4 = More than \$50,000,000
S = Assessment
W = Estimated
- D = \$5,001 - \$15,000
I12 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000
T = Cash Market
- E = \$15,001 - \$50,000

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
BEETLESTONE, WENDY	06/16/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ WENDY BEETLESTONE

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		605	858	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	8	247	530	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		575	807
Real estate owned – see schedule	1	250	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		300	000				
Cash value-life insurance							
Other assets itemize:							
Hangley Aronchick capital account		34	758				
				Total liabilities		575	807
				Net Worth	9	862	339
Total Assets	10	438	146	Total liabilities and net worth	10	438	146
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities*Brokerage Account #1*

Akzo Nobel N.V. (ADR)	14,886
American Movil S.A.B. de C.V. (ADR)	20,260
Aqua America Inc.	12,480
Boeing Co.	13,725
BP PLC (ADR)	12,738
Chevron Corp.	37,602
Eni SpA (ADR)	26,125
Exxon Mobil Corp.	35,714
General Electric Co.	16,610
Intel Corp.	8,472
iShares MSCI South Africa Index ETF	13,854
Koninklijke Philips NV (ADR)	10,153
Marathon Oil Corp.	22,902
Marathon Petroleum Corp.	25,707
Occidental Petroleum Corp.	79,984
Qualcomm Inc.	7,918
Rio Tinto PLC (ADR)	42,280
Sandisk Corp.	9,714
Santos Limited (ADR)	10,867
Siemens AG (ADR)	13,514
Southern Copper Corp.	2,935
Texas Instruments Inc.	14,391
Total SA (ADR)	35,260
Verizon Comm.	4,952
Woodside Petroleum Ltd	19,750

Brokerage Account #2

Alliance Resource Partners, LP	57,012
American Water Works Co.	16,737
Anadarko Petroleum Corp.	41,568
Anglo American PLC (ADR)	3,636
Apache Corp.	19,010
Arch Coal Inc.	527
Atlas Energy, LP	3,267
Atlas Resource Partners, LP	138
Barrick Gold Corp.	2,439
BHP Billiton Ltd. (ADR)	23,772
Boardwalk Pipeline Partners, LP	3,402
Boeing Co.	20,588
BP PLC (ADR)	106,486
BreitBurn Energy Partners, LP	10,725
Buckeye Partners, LP	23,778

California Water Service Group	27,192
Canadian Natural Resources Ltd.	6,380
Carrizo Oil & Gas Inc.	12,282
Chesapeake Energy Corp.	8,766
Chevron Corp.	159,809
China Petroleum & Chemical Corp. (ADR)	49,098
CNOOC Ltd. (ADR)	60,953
Compania de Minas Buenaventura S.A.A.	2,032
Conoco Phillips	228,564
CPFL Energia S.A. (ADR)	21,780
Crestwood Equity Partners LP	2,204
Crestwood Midstream Partners LP	1,396
DCP Midstream Partners, LP	30,773
E.I. duPont de Nemours & Co.	10,421
Ecopetrol S.A. (ADR)	9,620
Enbridge Energy Partners, LP	22,267
Enbridge Inc.	9,294
Energy Transfer Equity, LP	64,716
Energy Transfer Partners, LP	42,563
Enerplus Corp.	6,861
Eni SpA (ADR)	242,963
Enterprise Products Partners, LP	133,753
EV Energy Partners, LP	35,473
Exxon Mobil Corp.	248,577
First Quantum Minerals Ltd.	10,022
Freeport McMoran Copper & Gold Inc.	13,744
Gazprom OAO (ADR)	16,798
General Electric Co.	13,705
Genesis Energy, LP	25,214
Glencore Xstrata PLC	16,470
Goldcorp Inc.	14,352
Harmony Gold Mining Co. (ADR)	1,410
Hess Corp.	150,896
Holly Energy Partners, LP	10,188
Huntington Ingalls Industries Inc.	2,565
Husky Energy Inc.	9,885
Intel Corp.	7,060
iShares MSCI South Korea Index Fund (ETF)	6,566
JP Morgan Chase & Co.	8,685
Kinder Morgan Energy Partners, LP	61,067
Legacy Reserves, LP	10,196
Linn Energy LLC	21,056
Linco LLC	7,295
Lukoil Oil Co. (ADR)	14,965
Lundin Mining Corp.	3,930
Lynas Corp. (ADR)	1,065

Magellan Midstream Partners, LP	83,290
Marathon Oil Corp.	101,151
Marathon Petroleum Corp.	113,539
Marketwest Energy Partners, LP	39,426
Middlesex Water Co.	6,261
Murphy Oil Corp.	9,486
Murphy USA Inc.	1,929
National Grid PLC (ADR)	21,609
National Oilwell Varco Inc.	11,769
Newcrest Mining Ltd. (ADR)	3,656
Newmont Mining Corp.	3,417
Northrop Grumman Corp.	18,563
Now Inc.	1,211
Nucor Corp.	7,604
Nustar Energy, LP	12,106
Occidental Petroleum Corp.	134,973
Oceaneering International Inc.	22,461
OJSC OC Rosneft (GDR)	30,446
OMV AG (ADR)	10,404
Oneok Partners, LP	78,092
Oscient Pharmaceutical Corp.	6
Pan American Silver Corp.	4,582
Peabody Energy Corp.	3,252
PetroChina Co. Ltd. (ADR)	49,220
Petroleo Brasileiro S.A. Petrobras (ADR)	15,865
Phillips 66	115,962
Pioneer Natural Resources	10,302
Plains All American Pipeline, LP	57,670
Polski Koncern Naftowy Orlen S.A. (ADR)	0
QEP Resources Inc.	4,749
Randgold Resources Ltd. (ADR)	7,404
Regency Energy Partners, LP	16,099
Reliance Industries Ltd (GDR)	7,545
Repsol S.A. (ADR)	54,120
Rio Tinto PLC (ADR)	34,353
Royal Dutch Shell PLC (ADR)	344,774
Santos Limited (ADR)	12,226
Sasol Limited (ADR)	163,647
Schlumberger Ltd.	26,633
Schnitzer Steel Industries	2,530
Siemens AG (ADR)	20,271
Silver Wheaton Corp.	6,387
Sinopec Shanghai Petrochemical Co. (ADR)	7,887
Southern Copper Corp.	27,898
Spectra Energy Partners, LP	10,656
Suburban Propane Partners, LP	742

Talisman Energy Inc.	13,208
Targa Resources Partners, LP	44,831
Tata Motors Ltd. (ADR)	9,913
TC Pipeline, LP	12,795
Teck Resources Ltd.	5,455
Teco Energy Inc.	9,559
Templeton Emerging Markets Income Fund	7,909
Tenaris S.A. (ADR)	6,794
The India Fund, Inc.	24,906
TransCanada Corp.	23,130
TransMontaigne Partners, LP	27,012
Turquoise Hill Resources Ltd	1,496
Vanguard Natural Resources LLC	40,593
<i>Retirement Account #1</i>	
First Eagle Global Fund	120,346
<i>Trust #1</i>	
Amazon Inc.	21,607
American Express Co	9,528
CA Inc.	14,430
Caterpillar Inc.	10,931
Chubb Corp.	3,758
Coca Cola Co.	5,750
Comcast Corp.	7,444
DirecTV	6,634
Discovery Communications	3,181
E.I. duPont de Nemours & Co.	6,947
Ebay Inc.	3,860
Emerson Electric Co.	6,750
Eni SpA (ADR)	20,900
Expedia Inc.	4,656
Exxon Mobil Corp.	52,759
Gazprom OAO (ADR)	3,360
General Electric Co.	8,223
Hess Corp.	9,431
Imperial Oil Ltd.	4,981
Intel Corp.	13,838
JP Morgan Chase & Co.	5,790
Kimberly Clark Corp	11,153
Kraft Foods Group Inc.	5,993
Liberty Interactive Corp.	4,460
Liberty Media Corp.	3,545
Microsoft Corp.	9,661
Mondelez Inc.	7,550
News Corp.	395
Occidental Petroleum Corp.	29,994
Pall Corp.	5,609

PepsiCo Inc.	8,842
Proctor & Gamble Co.	8,015
Raytheon Co.	9,757
Repsol S.A. (ADR)	5,280
Rio Tinto PLC (ADR)	84,560
Royal Dutch Shell PLC (ADR)	31,616
Santos Ltd. (ADR)	10,867
Southern Copper Corp.	2,935
Taiwan Semiconductor Manufacturing Co. Ltd. (ADR)	3,898
Texas Instruments Inc.	8,635
Time, Inc.	272
TimeWarner Inc.	6,978
Total S.A. (ADR)	42,312
Twenty-First Century Fox Inc.	3,330
Wal-Mart Stores Inc.	7,662
Walt Disney Co.	11,865
Weyerhaeuser Co.	6,248
<i>Trust #2</i>	
Chevron Corp.	62,670
ConocoPhillips	24,489
Eni SpA (ADR)	7,838
Exxon Mobil Corp.	35,511
Freeport McMoran Copper & Gold Inc.	10,308
Hess Corp.	56,586
Imperial Oil Ltd.	29,886
Marathon Oil Corp.	9,543
Marathon Petroleum Corp.	10,711
Occidental Petroleum Corp.	29,994
Phillips 66	12,425
Reliance Infrastructure Ltd. (GDR)	8,199
Royal Dutch Shell PLC (ADR)	15,808
Sasol Limited (ADR)	11,484
Total S.A. (ADR)	66,994
<i>Retirement Account #2</i>	
Alger SMid Cap Growth Fund	80,213
Eaton Vance Atlanta Cap SMID- Cap Fund	85,304
Fidelity Cash Reserves	85,523
Fidelity Contrafund	64,297
First Eagle Overseas Fund	37,060
Harding Loevner International Equity Portfolio	38,173
JP Morgan Income Builder Fund	45,458
Loomis Sayles Bond Fund	43,241
Mutual Global Discovery Fund	56,756
SPDR S&P Dividend ETF	77,041
<i>Retirement Account #3</i>	
Vanguard Wellington Fund	188,447

Vanguard PRIMECAP Fund	218,974
Vanguard Target Retirement 2025 Fund	165,003
<i>Retirement Account # 4</i>	
CREF Stock	909,588
TIAA Traditional	158,191
CREF Global Equities	144,499
TIAA-CREF International Equity Fund	120,794
TIAA-CREF Real Estate	5,463
Total Listed Securities	<u>\$ 8,247,530</u>
<u>Real Estate Owned</u>	
Personal residence	\$ 1,000,000
Family home	250,000
Total Real Estate Owned	<u>\$ 1,250,000</u>

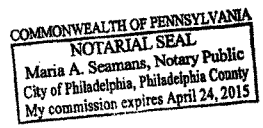
AFFIDAVIT

I, Wendy Beetlestone, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 16, 2014
(DATE)

Wendy Beetlestone
(NAME)

Maria A. Seamans
(NOTARY)



UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Mark A. Kearney

2. **Position:** State the position for which you have been nominated.

United States District Court for the Eastern District of Pennsylvania

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Elliott Greenleaf & Siedzikowski, P.C.
925 Harvest Drive, Suite 300
Blue Bell, Pennsylvania 19422

4. **Birthplace:** State year and place of birth.

1962; Philadelphia, Pennsylvania

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

September 1998 – May 1999, Temple University Adult Education for Horticultural Studies, no degree

1984 – 1987, Villanova University School of Law; J.D., 1987

1985 – 1986, Drexel University School of Business, no degree

1980 – 1984, Villanova University College of Arts and Sciences, B.A., 1984

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1990 – present
 Elliott Greenleaf & Siedzikowski, P.C.
 925 Harvest Drive, Suite 300
 Blue Bell, Pennsylvania 19422
 (formerly in Philadelphia, Pennsylvania)
 Associate (1990 – 1995)
 Shareholder (1995 – present)
 Co-Hiring Shareholder (1995 – present)
 Corporate Secretary (2000 – present)
 Director (2000 – present)
 Managing Shareholder of Delaware office (2011 – present)

1986 – 1990
 Elliott Mannino & Flaherty, P.C.
 1800 One Meridian Plaza
 Philadelphia Pennsylvania 19103
 Summer associate and part time clerk (1986 – 1987)
 Associate (1988 – 1990)

1987 – 1988
 Court of Chancery of the State of Delaware
 38 The Green
 Dover, Delaware 19901
 Judicial law clerk to Court of Chancery

January – April 1986
 Connolly & McAndrews, P.C. (no longer in business)
 65 West Street Road
 Warminster, Pennsylvania 18974
 Part-time law clerk

Summer 1985
 Eastburn & Gray
 60 East Court Street
 Doylestown, Pennsylvania 18901
 Summer law clerk

Summer 1985
 United States Court of Appeals for the Third Circuit
 U.S. Courthouse, Fourth & Cooper Streets
 Camden, New Jersey 08101
 Summer law intern for Hon. James Hunter III

Summer 1983, Summer 1984
 Industrial Valley Frozen Foods, Inc.
 Seven East Wynnewood Road, Suite 200

Wynnewood, Pennsylvania 19096
Summer sales representative

1984 – 1986
Genuardi's Markets (now defunct)
Norristown, Pennsylvania
Part time and overnight grocery clerk

Other affiliations (uncompensated unless otherwise indicated)

2010 – present
Legal Aid of Southeastern Pennsylvania
625 Swede Street
Norristown, Pennsylvania 19403
Director

2012 – present
Villanova Law School
299 North Spring Mill Road
Villanova, Pennsylvania 19085
Board of Consultors

2007 – present
Pennsylvania Bar Institute
5080 Ritter Road
Mechanicsburg, Pennsylvania 17055
President (May 2014 – present)
Vice-President (2013 – May 2014)
Secretary (2012 – 2013)
Treasurer (2011 – 2012)
Director (2007 – present)

2006 – present
Montgomery Bar Foundation
100 West Airy Street
P.O. Box 268
Norristown, Pennsylvania 19404
Vice President (2012 – present)
President (2010 – 2011)
Chairperson (2010)
Director (2006 – present)

2003 – present
Historical Society for the United States District Court for the Eastern District of
Pennsylvania
601 Market Street, Room 2609

Philadelphia, Pennsylvania 19106
 Director (2003 – present)
 Executive Committee (2005 – present)

2009 – 2012
 Montgomery Child Advocacy Project
 409 Cherry Street
 Norristown, Pennsylvania 19401
 Director

2005 – 2009
 Montgomery Bar Association
 100 West Airy Street
 P.O. Box 268
 Norristown, Pennsylvania 19404
 President (2009)
 President-Elect (2008)
 Vice-President (2007)
 Secretary (2006)
 Treasurer (2005)

2002 – 2013
 Welcoming Center for New Pennsylvanians
 One Penn Center, Suite 555
 1617 John F. Kennedy Boulevard
 Philadelphia, Pennsylvania 19103
 Chairperson (2002 – 2010)
 Director (2002 – 2013)

2002 – 2004
 Internet Cable Corporation (no longer in business)
 Charleston, South Carolina
 Director (2002 – 2004) (reimbursed travel expense)
 Audit Committee Chair (2003 – 2004)

2000 – 2002
 Philadelphia Area Immigration Resource Center (now defunct)
 Philadelphia, Pennsylvania
 Board of Directors

1998 – 1999
 U.S.A. Bancshares (no longer in business)
 Philadelphia, Pennsylvania
 Director (1998 – 1999) (reimbursed expenses)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I timely registered for the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Martindale Hubbell AV rated since 1995 (first year of eligibility)

Top 100 lawyer in Pennsylvania (2012, 2013, 2014) and Philadelphia (2011, 2012, 2013 and 2014) and Pennsylvania *Super Lawyer* by Thomson Reuters (2003 – 2014)

Benchmark Litigation, Pennsylvania Local Litigation Star (2013, 2014)

The American Cancer Society's *Care Never Quits* Award and Whitpain Recreation Association's 2012 Volunteer Recognition Award for creating and succeeding with a four-day youth baseball tournament in 2011 and 2012 with all proceeds benefiting the American Cancer Society and Montgomery Child Advocacy Project (2012)

Pennsylvania Bar Association's Exemplary Pro Bono Award (2012)

Pennsylvania Bar Association's Chief Justice John P. Flaherty Award "in Recognition of an Outstanding Effort to Promote the Objects and Purposes to Improve the Legal Profession, The Justice System or the Community" (2012)

Norristown Area School District's Special Recognition Award for Commitment to the Civics Education of Students in the School District (2011)

Montgomery Bar Association's Henry Stuckert Miller Public Service Award for Devotion and Service to the Community of Montgomery County (2011)

Suburban Life Readers Choice Recognition for Region's Top Lawyers, Business Law (2011)

National Thomson Reuters Luminary Award for Communications Excellence from the National Association of Bar Executives (2008, 2010)

Montgomery Bar Association's Annual President's Award for "Leadership and Dedicated Service to the Bar and Devotion to the Rule of Law" (2003)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the

titles and dates of any offices which you have held in such groups.

American Bar Association (1988 – 1992, 1996 – present)

Conference of County Bar Leaders (2005 – 2009)

Delaware State Bar Association (1988 – present)

Historical Society for the United States District Court for the Eastern District of Pennsylvania (1990 – present)

Director (2003 – present)

Co-Chair Portrait Committee (2005 – present)

Member, Executive Committee (2005 – present)

Co-Chair Annual Meeting and Dinner (May 2007)

Planning Committee, Tribute to Judge A. Leon Higginbotham (October 2000)

Lawyers Advisory Committee of the Judicial Council of the United States Court of Appeals for the Third Circuit: Representative of the United States District Court for the Eastern District of Pennsylvania for a three-year term appointed by the District Court (2012 – 2015)

Legal Aid of Southeastern Pennsylvania (2010 – present)

Director (2010 – present)

Montgomery Bar Association (1993 – present)

President (2009)

President-elect (2008)

Vice President (2007)

Treasurer (2006)

Secretary (2005)

Director (2002 – 2005)

CLE Director (2007)

Legislative Liaison (2007 – present)

Chair/Co-Chair, Federal Practice Committee (1999 – 2009, 2013 – present)

Chair, Managing Partners Committee (2008 – 2009)

Chair, Government Relations Committee (2010 – 2014)

Montgomery Bar Foundation (1993 – present)

Director (2005 – present)

Chairperson (2010)

President (2010 – 2011)

Vice President (2012 – present)

Montgomery Child Advocacy Project (2007 – present)

Advocate (2007 – present)

Director (2009 – 2012)

National Conference of Bar Presidents (2008 – 2010)

Pennsylvania Bar Association (1988 – present)
 Federal Practice Committee, Steering Committee (2012 – present)
 House of Delegates (2004 – present)

Pennsylvania Bar Institute (2008 – present)
 President (May 2014 – present)
 Vice President (2013 – May 2014)
 Secretary (2012 – 2013)
 Treasurer (2011 – 2012)
 Director (2008 – 2013)

Philadelphia Bar Association (1989 – present)

United States District Court Merit Selection Panels for the Retention of U.S. Magistrate Judges (2002, 2004)

United States District Court Merit Selection Panel for the Recommendation of U.S. Magistrate Judge (2005 – 2006)

Villanova Law School (2012 – present)
 Board of Consultants

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Delaware, 1988
 Pennsylvania, 1988

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Delaware Supreme Court, 1988
 Pennsylvania Supreme Court, 1988
 United States District Court for Delaware, 1988
 United States Court of Appeals for the Third Circuit, 1989
 United States District Court for the Eastern District of Pennsylvania, 1989
 United States Court of Appeals for the Eleventh Circuit, 1994

United States District Court for the Middle District of Pennsylvania, 1998
Supreme Court of the United States, 2000

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Welcoming Center for New Pennsylvanians
Board of Directors (2002 – 2013)
Chair (2002 – 2012)

Brehon Law Society (2002 – present)

Malvern Retreat League (1984 – present)

Pennsylvania Society (1996 – present)

Philadelphia Area Immigration Resource Center
Board of Directors (2000 – 2002)

Philadelphia Aviation Country Club (2007 – present)

Philadelphia Vesper Club (2001 – 2009)

Whitpain Recreation Association (2005 – present)
Tournament Chair (2011 – 2012)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to question 11a above currently or formerly discriminated on the basis of race, sex,

religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

“Federal Courts Committee Hosts Three Federal Judges Providing Significant Legal Education on Supreme Court Term,” *Montgomery Bar Association Sidebar* (Summer 2013). Copy supplied.

“2012 Whitpain Baseball Summer Smash” Letter to the Editor of *MCAP Happenings* (Winter 2012 – 2013). Copy supplied.

Book Review: “Mortals with Tremendous Responsibilities, a History of the United States District Court for the Eastern District of Pennsylvania,” *Montgomery Bar Association Sidebar* (Fall 2012). Copy supplied.

“A No-Lose Gift: Memorial and Gift Donations to the Foundation,” *Montgomery Bar Association Sidebar* (Fall 2011.) Copy supplied.

Solicitation of Sponsors Letter, Whitpain Summer Smash Charity Baseball Tournament (June 10, 2011). Copy supplied.

“Bar Foundation’s Grant Process Works,” *Montgomery Bar Association Sidebar* (Spring 2011). Copy supplied.

“Consider the Foundation’s 25th Anniversary for a Memorial Gift,” *Montgomery Bar Association Sidebar* (Winter 2010 – 2011). Copy supplied.

“Establish your Legacy through the Bar Foundation,” *Montgomery Bar Association Sidebar* (Fall 2010). Copy supplied.

“Outgoing President’s Message: Beyond MBA 125,” *Montgomery Bar Association Sidebar* (Winter 2009). Copy supplied.

2009 Summary of Activities Report for the Executive Committee of the Montgomery Bar Association, as part of a compendium of Reports from each Bar Committee (December 2009). Copy supplied.

“President’s Message: Setting the Stage for the Next Quarter Century,” *Montgomery Bar Association Sidebar* (Fall 2009). Copy supplied.

"Judicial Election," *The Times Herald* (November 4, 2009). Copy supplied.

"Portrait of the Montgomery Bar Association 1980-2009: Meeting the Challenges of a Dynamic Era," *Modern Graphics* (June 9, 2009). Copy supplied.

"President's Message: A Time to Reflect," *Montgomery Bar Association Sidebar* (Summer 2009). Copy supplied.

"2009 Legal Aid Golf Classic is a Success, Including a Presidential Hole in One and Massage Table," *Montgomery Bar Association Sidebar* (Summer 2009). Copy supplied.

"MBA's Managing Partners Forum Issues Survey on Practice in Montgomery County," *Montgomery Bar Association Sidebar* (Summer 2009). Copy supplied.

"Montgomery Bar Visits Supreme Court," *Montgomery Bar Association Sidebar* (Summer 2009). Copy supplied.

"President's Message," *Montgomery Bar Association Sidebar* (Spring 2009). Copy supplied.

"Incoming President's Message," *Montgomery Bar Association Sidebar* (Winter 2008). Copy supplied.

"Superior Court Presents CLE and Hears Oral Arguments in Montgomery County Courthouse," *Montgomery Bar Association Sidebar* (Summer 2008). Copy supplied.

Press Release from Elliott Greenleaf & Siedzikowski, P.C. announcing the addition of an immigration practice to the law firm. (December 12, 2007) Copy supplied.

"Federal Judges Return to Norristown," *Montgomery Bar Association Sidebar* (Summer 2007). Copy supplied.

"MBA Sponsors Admissions to the United States District Court for the Eastern District of Pennsylvania," *Montgomery Bar Association Sidebar* (Summer 2006). Copy supplied.

"MBA Advocates Legislation to Protect its Members," *Montgomery Bar Association Sidebar* (Spring 2006). Copy supplied.

"The Federal Courts Committee Meets with Justice O'Connor Following Supreme Court Admissions Ceremonies," *Montgomery Bar Association Sidebar* (Summer 2005). Copy supplied.

“Federal Court Admission in Harrisburg,” *Montgomery Bar Association Sidebar* (Fall 2004). Copy supplied.

“The Honorable Arlen Specter Visits Montgomery Bar Association,” *Montgomery Bar Association Sidebar* (Summer 2003). Copy supplied.

“Thirty-three Bar Members Admitted to Supreme Court,” *Montgomery Bar Association Sidebar* (Winter 2002 – 2003). Copy supplied.

“Federal Courts Committee Witnesses Supreme Court Oral Arguments,” *Montgomery Bar Association Sidebar* (Winter 2001 – 2002). Copy supplied.

“Reception for New Federal Judges is a Success,” *Montgomery Bar Association Sidebar* (Summer 2001). Copy supplied.

“Four MBA Members Admitted to Supreme Court,” *Montgomery Bar Association Sidebar* (Summer 2000). Copy supplied.

“The Annuity Class Action: Securities Fraud or *Prudential?*: The Distribution Issues,” Market Conduct Conference 2000 (April 27 – 28, 2000). Copy supplied.

“Attorneys’ Fees in Pennsylvania and in Federal Class Actions,” Continuing Legal Education (July 2000). Copy supplied.

Co-Author, “A Primer on the Rights and Duties of Directors - (Part II),” 42 *Villanova Law Review*, No. 4 (1997). Copy supplied.

“Cede III: Towards a Clear Standard for Corporate Fiduciaries,” *Butterworths Journal of International Banking and Financial Law* (November 1995). Copy supplied.

Co-Author, “A Primer on the Rights and Duties of Directors (Part I),” 40 *Villanova Law Review*, No. 5 (1995). Copy supplied.

“Director and Officer Liability Insurance,” Pennsylvania Bar Institute – Business Lawyers’ Institute (July 1995). Copy supplied.

“The Evolving Standard of Scrutiny Applied to Directors’ Decisions,” *Butterworths Journal of International Banking and Financial Law* (January 1995). Copy supplied.

“Outside Professional Advisors Gain New Immunity from Racketeering Statutes,” *Butterworths Journal of International Banking and Financial Law* (May 1993). Copy supplied.

"ADA Puts Banks on Guard against Lawsuits by Handicapped," *Butterworths Journal of International Banking and Financial Law* (July 1992). I have been unable to locate a copy.

"Foreign Sovereign Investment in the United States," *Butterworths Journal of International Banking and Financial Law* (Nov. 1991). Copy supplied.

"Paramount v. Time: New Options for Directors with Long Term Plans," *Butterworths Journal of International Banking and Financial Law* (May 1990). Copy supplied.

"Update on Target Auction and Poison Pills," *Bowne's Digest for Corporate and Securities Lawyers*, Vol. 4, No. 2 (1990). Copy supplied.

"The Poison Pill as Shield and Gavel," *Directors & Boards*, Vol. 13, No. 4 (1989). Copy supplied.

"The Redemption of Poison Pills: The New Battleground," *Butterworths Journal of International Banking and Financial Law* (Dec. 1989). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

During my tenure as an officer of the Montgomery Bar Association, I am aware of certain resolutions passed by its Board of Directors. Although I did not vote on these resolutions, I signed the Resolutions as an Officer for the Association's records:

December 2, 2009, Resolution opposing the limited constituency for the Pennsylvania Bar Association's Constitutional Commission selected solely by three officers. Copy supplied.

March 23, 2006, Resolution in support of legal efforts by the State Judiciary to overturn legislative action reducing judicial compensation. Copy supplied.

October 27, 2005, Resolution opposing the passage of proposed Pennsylvania House Bill 1920 imposing a sales tax on professional legal services. Copy supplied.

October 27, 2005, Resolution opposing the Pennsylvania Senate Bill 656 as currently written concerning residential construction defects between

contractors and homeowners or members of associations. Copy supplied.

October 19, 2005 and April 12, 2005, Resolutions in support of proposed Pennsylvania Senate Bill 392 requiring the official publishing of the formation of Limited Liability Companies and Limited Liability Partnerships in the legal newspaper of the County in which the business entity is to be located. Copy supplied.

April 28, 2005, Resolution approving the expenditure of \$25,000 for a county-wide public relations campaign to educate the community about lawyers' charitable efforts. Copy supplied.

The Philadelphia Area Immigration Resource Center issued a statement concerning an award being presented to Daniel Berrigan and Martin Sheen in April 2001. In my capacity as a board member, I participated in preparing the statement. Although I have been unable to obtain a copy of the statement, I have supplied press coverage quoting from it.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have not testified or made any official statement or communication relating, in whole or in part, to matters of public policy or legal interpretation.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

February 28, 2014, Panelist, "Preserving the History of Your Bar Association" sponsored by the Pennsylvania Conference of County Bar Leaders at Pennsylvania State University in State College, Pennsylvania. I briefly spoke on successes and challenges in preserving and archiving materials to educate the members of the Bar and public concerning lawyers' roles in the community. I have no notes, transcript or recording. The address for the Conference of County Bar Leaders is 100 South Street, Harrisburg, Pennsylvania 17108.

October 10, 2013, Moderator, "Transactions and Investments in Eastern Europe," Continuing Legal Education sponsored by the Montgomery Bar Association in

Prague, Czech Republic. I directed the discussions among the attendees and guest speaker concerning the practice of transactional law in Eastern Europe. I have no notes, transcript or recording. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404

May 29, 2013, Moderator, "The Impact of the 2011-2012 Term of the United States Supreme Court on Federal Court Practice," Continuing Legal Education, co-sponsored by the Pennsylvania Bar Institute, the Pennsylvania Bar Association, and the Montgomery Bar Association. I directed the analysis among several federal judges. I have no notes, transcript or recording. The address for the Pennsylvania Bar Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

March 6, 2013, Speaker in tribute to past Board Members, Dennis Clark Solas Award Dinner, sponsored by Welcoming Center for New Pennsylvanians. I offered remembrance remarks in honor of two recently deceased Board Members. I have no notes, transcript or recording. The address for Welcoming Center for New Pennsylvanians is One Penn Center, Suite 555, 1617 JFK Boulevard, Philadelphia, Pennsylvania 19103.

February 24, 2012, Honoree and Speaker, Pennsylvania Conference of County Bar Leaders Luncheon upon receipt of the Chief Justice John P. Flaherty Award, Lancaster, Pennsylvania. I spoke on the importance of attorney involvement in the community and support of the organized Bar. I have no notes, transcript or recording. The address for the Conference of County Bar Leaders is 100 South Street, P.O. Box 186, Harrisburg, Pennsylvania 17108.

January 13, 2012, Speaker, Montgomery Bar Association's Annual Business Luncheon in Blue Bell, Pennsylvania. I presented remarks of gratitude and distributed Foundation Awards to charities in Montgomery County. I have no notes, transcript or recording. The address for the Montgomery Bar Foundation is 100 West Airy Street, Norristown, Pennsylvania 19404.

December 7, 2011, Speaker and Chair for the Dennis Clark Solas Award Dinner, sponsored by Welcoming Center for New Pennsylvanians. I spoke about the important work of the organization and introduced speakers. I have no notes, transcript or recording. The address for Welcoming Center for New Pennsylvanians is One Penn Center, Suite 555, 1617 JFK Boulevard, Philadelphia, Pennsylvania 19103.

April 29, 2011, Honoree and Speaker, Montgomery County Law Day, upon receipt of the Henry Stuckert Miller Public Service Award, Courthouse, Norristown, Pennsylvania. I spoke on the importance of attorneys giving back to their communities and using their gifts to support a societal cause outside of personal financial wealth. I have no notes, transcript or recording. The address

for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

January 7, 2011, Speaker, Montgomery Bar Association's Annual Business Luncheon in Blue Bell, Pennsylvania. I presented remarks of gratitude and distributed Foundation Awards to charities in Montgomery County. I have no notes, transcript or recording. The address for the Montgomery Bar Foundation is 100 West Airy Street, Norristown, Pennsylvania 19404.

Since 2010, I have taught a one hour civics class curriculum to sixth grade students in the Norristown School District six times a year in a collaborative project with the Pennsylvania and Montgomery Bar Associations. Although I do not recall the exact dates and topics of each class, I do recall teaching a class titled, "Introduction to Civics and the Law" in September 2010 and a class titled, "Courts, Where Rights are Protected" in December. I have no notes, transcript or recording. The address for the Montgomery Bar Foundation is 100 West Airy Street, Norristown, Pennsylvania 19404.

June 2, 2010, Speaker, Continuing Legal Education, "An Afternoon with our Federal Bench" sponsored by the Pennsylvania Bar Association Federal Practice Committee, Norristown, Pennsylvania. I spoke concerning lawyer conduct before the federal courts. I have no notes, transcript or recording. The address for the Pennsylvania Bar Association is 100 South Street, Harrisburg, Pennsylvania 17108.

April 23, 2010, Honoree and Speaker, Montgomery Bar Association's Annual Dinner Dance, at Meadowlands Country Club, Blue Bell, Pennsylvania. I spoke in gratitude to the many persons who worked with me during my year as Bar President. I have no notes, transcript or recording. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

January 8, 2010, Chair and Lead Speaker, Montgomery Bar Annual Business Luncheon, Address from Departing President, Blue Bell, Pennsylvania. Notes supplied.

December 16, 2009, Speaker, Naturalization Ceremony for American Citizenship, Harriton High School, Villanova, Pennsylvania, sponsored by the Montgomery Bar Association, Villanova, Pennsylvania. I congratulated the new citizens and spoke of the opportunities for advancement in Eastern Pennsylvania. I have no notes, transcript or recording. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

December 1, 2009, Presenter of Gifts from Montgomery Bar Association to the families of troops under the Bar's "Holidays for Heroes" campaign in Willow Grove, Pennsylvania. I expressed the interest of the Bench and Bar in assisting

the families of our servicemen and women, particularly during the holiday season. I have no notes, transcript or recording, but press release supplied. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

December 1, 2009, Speaker, Montgomery Bar Association Awards Ceremony for Winners of the "There Ought to Be a Law" You Tube Competition, Norristown, Pennsylvania. I congratulated the winners in this competition in my role as Bar President, including the donation of funds to charitable organizations such as the Beginning Over Foundation. I have no notes, transcript or recording. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

November 5, 2009, Host and Speaker, Annual Member Dinner of Montgomery Bar Association, Philadelphia Cricket Club in Philadelphia, Pennsylvania. I spoke of the honored guests and fifty-year members of the Bar Association. Outline supplied.

October 22, 2009, Speaker, Tenth Anniversary Celebration of the Montgomery County Paralegal Association in Lansdale, Pennsylvania. I spoke of the importance of qualified paralegals to lawyers and courts. I have no notes, transcript or recording. The address for the Montgomery County Paralegal Association is P.O. 1765, Blue Bell, Pennsylvania 19422.

September 11, 2009, I hosted the Montgomery Bar Association's Judicial Candidate Media Project, a public service interview with each of the fourteen candidates for the Court of Common Pleas of Montgomery County, Pennsylvania that was shown on local cable access channels. I provided no commentary but asked each candidate the same question: Why do you want to be a judge of the Court of Common Pleas? Video supplied.

May 19, 2009, Moderator and Speaker, Continuing Legal Education, "An Introduction and Comparison of Irish and Pennsylvania Legal Systems," sponsored by the Montgomery Bar Association, Galway City, Ireland. I spoke on the Pennsylvania Rules of Civil Procedure. I have no notes, transcript or recording. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

May 1, 2009, Dinner host and speaker, Montgomery Bar Association Annual Dinner Dance, Phoenixville, Pennsylvania. I welcomed guests and congratulated the immediate past president of the Montgomery Bar Association. I have no notes, transcript or recording. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

April 30, 2009, Speaker, Montgomery County Law Day, Courthouse, Norristown, Pennsylvania. Outline supplied.

March 27, 2009, Speaker, Annual Memorial Service for Deceased Members of the Montgomery Bar Association, Norristown, Pennsylvania. Outline supplied.

February 6, 2009, Speaker, Continuing Legal Education, "The Evolving Summary Judgment Standard in Federal Court," sponsored by Montgomery Bar Association at the Courthouse, Norristown, Pennsylvania. I spoke to the changes in Rule 56 of the Federal Rules of Civil Procedure. I have no notes, transcript or recording. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

January 9, 2009, Speaker, Annual Business Luncheon of Montgomery Bar Association, Welcoming Address from New President, Blue Bell, Pennsylvania. Outline and remarks supplied.

November 12, 2008, Speaker, Continuing Legal Education, "Effective Written and Oral Advocacy; Procedural Developments," sponsored by the Montgomery Bar Association in Norristown, Pennsylvania. I spoke of credibility in written and oral advocacy to ensure meaningful results. I have no notes, transcript or recording. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

November 19, 2007, Speaker and Chair for the Dennis Clark Solas Award Dinner, sponsored by Welcoming Center for New Pennsylvanians in Philadelphia, Pennsylvania. I welcomed the attendees and introduced speakers. I have no notes, transcript or recording. The address for Welcoming Center for New Pennsylvanians is One Penn Center, Suite 555, 1617 JFK Boulevard, Philadelphia, Pennsylvania 19103.

September 29, 2007, Moderator, Continuing Legal Education Panel, "Lawyers and Media," sponsored by Montgomery Bar Association, Galloway, New Jersey. I moderated a panel with legal reporters, criminal lawyers and judges on the concerns raised at the intersection of media and trials. I have no notes, transcript or recording. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

May 24, 2007, Dinner Co-Chair of the Annual Meeting of the Historical Society of the United States District Court for the Eastern District of Pennsylvania in Philadelphia, Pennsylvania. Outline supplied.

September 28, 2006, Moderator, Symposium "Immigration: The Real Issues Behind the Headlines," sponsored by the Montgomery Bar Association Community Outreach Committee and Welcoming Center for New Pennsylvanians, Gwynedd, Pennsylvania. I moderated and introduced national speakers addressing the legal issues facing legal immigrants in Eastern Pennsylvania. I have no notes, transcript or recording, but press coverage is

supplied. The address for the Montgomery Bar Association is 100 West Airy Street, Norristown, Pennsylvania 19404.

March 22, 2006, Speaker and Chair for the Dennis Clark Solas Award Dinner, sponsored by Welcoming Center for New Pennsylvanians in Philadelphia, Pennsylvania. I introduced the honorees and addressed the work of the Welcoming Center. I have no notes, transcript or recording. The address for Welcoming Center for New Pennsylvanians is One Penn Center, Suite 555, 1617 JFK Boulevard, Philadelphia, Pennsylvania 19103.

November 6, 2004, Speaker and Chair for the Dennis Clark Solas Award Luncheon, sponsored by Welcoming Center for New Pennsylvanians in Philadelphia, Pennsylvania. I welcomed the large gathering and congratulated the Welcoming Center on their continued growth. I have no notes, transcript or recording. The address for Welcoming Center for New Pennsylvanians is One Penn Center, Suite 555, 1617 JFK Boulevard, Philadelphia, Pennsylvania 19103.

June 11, 2004, Panelist, Continuing Legal Education, "Is Technology All It's Cracked up to Be?," at the Federal Bench-Bar Conference sponsored by the Federal Courts Committee of the Philadelphia Bar Association in Cheltenham, Pennsylvania. I addressed the role of financial forensic technology for use in commercial litigation and in settlement conferences. I have no notes, transcript or recording. The address for the Philadelphia Bar Association is 1101 Market Street, Eleventh Floor, Philadelphia, Pennsylvania 19107.

November 16, 2003, Speaker and Chair for the Dennis Clark Solas Award Dinner, sponsored by Welcoming Center for New Pennsylvanians in Philadelphia, Pennsylvania. I introduced the speakers and honorees and congratulated the hosts. I have no notes, transcript or recording. The address for Welcoming Center for New Pennsylvanians is One Penn Center, Suite 555, 1617 JFK Boulevard, Philadelphia, Pennsylvania 19103.

May 16, 2001, Speaker and Chair for the First Annual Dennis Clark Solas Award Dinner, sponsored by the Philadelphia Area Immigration Resource Center in Philadelphia, Pennsylvania. I introduced the honorees and expressed the Center's gratitude for the significant efforts by many volunteers. I have no notes, transcript or recording, and the Center, formerly located in Upper Darby, Pennsylvania, closed in 2002.

July 5, 2000, Speaker, Continuing Legal Education, "Attorney's Fees in Pennsylvania and in Federal Class Actions," sponsored by the Montgomery Bar Association in Norristown, Pennsylvania. Materials supplied.

October 21, 1999, Speaker, Continuing Legal and Professional Education, "Issues in Federal and Pennsylvania Courts," sponsored by the Pennsylvania Institute of Certified Public Accountants in Philadelphia, Pennsylvania. Outline supplied.

June 22, 1995, Speaker, "Directors and Officers Liability Insurance Update," Continuing Legal Education, sponsored by the Pennsylvania Bar Institute at its First Annual Business Lawyers Institute in Philadelphia, Pennsylvania. Materials supplied.

1995 – 1999: Speaker, Career Days, Archbishop Wood High School in Warminster, Pennsylvania. For one hour each spring, I returned to Career Day at my former high school to speak to students regarding a legal career. I have no notes, transcript or recording, but press coverage is supplied. The address for Archbishop Wood High School is 655 York Road, Warminster, Pennsylvania 18974.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Elliott Greenleaf Press Release, "Elliott Greenleaf Names Five New Shareholders," *Constant Contact* (November 28, 2012)(reprinted in various forms)

Gina Passarella, "Stevens & Lee Rebuts Elliott Greenleaf's Dropbox Lawsuit," *The Legal Intelligencer* (April 5, 2012). Copy supplied.

Gina Passarella, "Pa. Firm Claims Ex-Partner Used Portable Drives to Steal Client Files," *The Legal Intelligencer* (March 22, 2012).

Gina Passarella, "Elliott Greenleaf Adds Allegations Ex-Partner Misused Escrow Funds," *The Legal Intelligencer* (March 13, 2012). Copy supplied.

Lisa Stephens, "Corporate Sabotage Brings Partnership to an End," *Technorati.com* (February 21, 2012). Copy supplied.

Gina Passarella, "Elliott Greenleaf Sues Ex-Partner, Stevens & Lee Over Client Files," *The Legal Intelligencer* (February 10, 2012). Copy supplied.

Amaris Elliott-Engel, "Judge Orders \$2.2 Mil. Payout in Labor Class Action," *The Legal Intelligencer* (May 11, 2011). Copy supplied.

"Montgomery Bar Foundation Announces Grant Recipients," *The Times Herald* (May 6, 2011). Copy supplied.

Carl Rotenberg, "Fazio Asks For Reduction In Scope, Cost Of Remediation Work on 770 Sandy Street," *The Times Herald* (December 30, 2010). Copy supplied.

Carl Rotenberg, "Judge's Order Concerning Sandy Street Complex Appealed," *The Times Herald* (September 29, 2010). Copy supplied.

John P. Martin, "Norristown Ordered to Make Repairs at Unsafe Condo Building," *The Philadelphia Inquirer* (September 2, 2010). Copy supplied.

Carl Rotenberg, "Judge Hears Sandy Street Condo Arguments," *The Times Herald* (September 1, 2010). Copy supplied.

Carl Rotenberg, "Builder Fazio Reportedly Owes Millions," *The Times Herald* (June 13, 2010). Copy supplied.

Terrie Morgan-Besecker, "Class-Action Set in Time-Share Suit", *The Times Leader* (June 5, 2010). Copy supplied.

Carl Rotenberg, "Sandy Street Building's Woes Building," *The Times Herald* (May 15, 2010). Copy supplied.

Keith Phucas, "Lawyers Help Local Military Families," *The Times Herald* (January 11, 2010). Copy supplied.

"Pet Center Needs Cat, Dog Food Nonprofit's Video Wins Competition," *Eastern Express Times (Pennsylvania)* (December 17, 2009). Copy supplied.

Christopher Markopulos, "The Judicial Media Project," *The Montgazette* (October 13, 2009). Copy supplied.

Margaret Gibbons, "Videos Let You See and Hear Candidates," *Intelligencer* (October 12, 2009). Copy supplied.

Interview with Hank Cisco on the Hank Cisco closed circuit television show in Norristown, Pennsylvania on the events surrounding the Montgomery Bar Association's 125 year anniversary (March 2009). I have no notes, transcript or copy of this televised interview.

Keith Phucas, "Organization Recalls 125 Years of Service," *The Times Herald* (February 18, 2009). Copy supplied.

Montgomery Bar Association Press Release, "MBA Launches Major Diversity Initiative" (January 2009). Copy supplied.

Amaris Elliott-Engel, "Montco Bar Leader Stresses Vision in Face of Uncertainty," *The Legal Intelligencer* (January 14, 2009). Copy supplied.

Amaris Elliott-Engel, "Montgomery Bar Diversity Event Packs a Full House," *The Legal Intelligencer* (November 12, 2008). Copy supplied.

Amaris Elliott-Engel, "Montco Selects First Non-Judge as Settlement Master," *The Legal Intelligencer* (October 13, 2008). Copy supplied.

Elizabeth Bennett, "Elliott Greenleaf Office Has a Busy Beginning in Wilmington," *Delaware Law Weekly* (March 2008). Copy of reprint supplied.

Wire Report, "B. J. Marchese: PA Judge Oks \$2.45 Mil Identity Theft Settlement," *Class Action Reporter* (November 20, 2007). Copy supplied.

CN8 Newsmakers Interview with Mark A. Kearney regarding the Montgomery Bar Association's Symposium on Immigration (September 2006). I have no notes, transcript or copy of this televised interview.

Marion Callahan, "Getting the Facts on Immigration: The Montgomery Bar Association will Discuss the Issue that is Dividing the Country," *The Intelligencer* (September 28, 2006). Copy previously supplied in response to 12d.

Shannon P. Duffy, "Delaware Nation Fails to Revive Suit to Reclaim Land," *The Legal Intelligencer* (May 5, 2006). Copy supplied.

Pennsylvania Bar Association Press Release, "Montgomery County Lawyer to Receive Statewide Award for Leadership" (March 2, 2005). Copy supplied.

Wire Report, "News in Brief," *Associated Press* (January 27, 2005). Copy supplied.

Carl Hessler, Jr., "Deal Pending in Marchese Suit," *The Times Herald* (May 17, 2004). Copy supplied (reprinted in multiple outlets).

Carl Hessler, Jr., "Auto Dealer Must Write Lenders Letters," *The Times Herald* (March 29, 2004). Copy supplied.

Thomas Ginsberg, "New Resource Aims to Make the Region 'Immigrant-Friendly'," *The Philadelphia Inquirer* (June 11, 2003). Copy supplied.

Beth E. Yanofsky, "County Bar Hosts Federal Judges," *Lansdale Reporter* (April 11, 2001). Copy supplied.

Bronwyn Reice, "Local Lawyers Admitted Into U.S. District Court," *The Times Herald* (June 11, 2000). Copy supplied.

Wire Report, "Life USA Seeks to Bypass Lower Court I Class-Action Suit," *BestWire* (February 14, 2000). Copy supplied.

Trevor Thomas, "Life USA Will Fight Annuity Suit," *National Underwriter, Life & Health/Financial Services Edition* (February 7, 2000). Copy supplied.

Press Release, "Internet Cable Corp. Holds Annual Shareholders Meeting; New Board of Directors Elected," *PR Newswire* (January 31, 2000). Copy supplied.

Wire Report, "In Brief," *National Underwriter, Life & Health/Financial Services Edition* (January 24, 2000). Copy supplied. (reprinted in multiple outlets).

Trevor Thomas, "Trial Ordered In Life US Annuity Suit," *National Underwriter, Life & Health/Financial Services Edition* (October 11, 1999). Copy supplied.

N.J. Oldwick, "Ethics Award-Winning Insurer Faces Conduct Lawsuit," *BestWire* (February 17, 1998). Copy supplied.

Carole Ann King, "Life USA Sued Over 'Misleading' Annuity Sales," *National Underwriter, Life & Health/Financial Services Edition* (February 9, 1998). Copy supplied.

Michelle Conlin, "King Lear," *Forbes Magazine* (September 23, 1996). Copy supplied.

Andrew Cassell, "Bank's Dispute is in Court the Ousted CEO of First Commercial Got an Order. The Proxy Battle Has Been Delayed," *The Philadelphia Inquirer* (April 28, 1995). Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office, but I have served in a fact-finding role by appointment as listed below.

In 2011 and 2012, I was appointed in two cases as a compensated Complex Discovery Master in substantial trade secret and fiduciary duty/employment dispute matters in the Court of Common Pleas of Montgomery County with the jurisdiction to resolve significant discovery, attorney-client and substantive issues following briefing and oral argument.

From 2000 to 2006, I served the Pennsylvania Supreme Court as an unpaid Member of a Hearing Committee of the Disciplinary Board of the Pennsylvania Supreme Court with the responsibility for presiding over trials concerning alleged violations of the Rules of Professional Conduct and appropriate sanctions to recommend to the Disciplinary Board, and eventually the Pennsylvania Supreme Court.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

Although I have not presided over any cases in the traditional sense, I have presided over a number of trials before the Disciplinary Board of the Pennsylvania Supreme Court.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

b. Provide citations for all opinions you have written, including concurrences and dissents.

I have not issued any written opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Missett v. Hub International Pennsylvania, Inc.* No. 08-22584 (C.C.P. Montg.)

Judge Del Ricci appointed me to resolve the attorney-client and discovery issues arising on remand. The parties were disputing the scope and enforceability of a non-compete agreement and the consideration for the non-compete following remand from the Pennsylvania Superior Court. I issued one or two page discovery orders, but no opinions.

Counsel were:

Lawrence H. Pockers
Duane Morris, LLP
30 South 17th Street
Philadelphia, PA 19103
215-979-1153

Jed L. Marcus
Bressler, Amery & Ross
325 Columbia Turnpike
Florham Park, NJ 07932
973-514-1200

2. *Globus Medical Inc. v. L5 Surgical LLC et al.*, No. 09-42959 (C.C.P. Montg.)

Judge Del Ricci appointed me to rule upon the discovery and privilege issues. The parties were disputing provisions in an asset purchase and sale agreement and trade secret protections. I issued one or two page discovery orders, but no opinions.

Counsel were:

Matthew A. Taylor
James L. Beausoleil
Lawrence H. Pockers
Christina E. Norland Audigier
Duane Morris, LLP
30 South 17th Street
Philadelphia, PA 19103
215-979-1153

Gary Green
Robert A. Davitch
Larry M. Keller
Sidkoff, Pincus & Green
1101 Market Street
2700 Aramark Tower
Philadelphia, PA 19107
215-574-0600

In addition, from 2000 to 2006, while serving the Pennsylvania Supreme Court as an unpaid Member of a Hearing Committee of the Disciplinary Board, I recall sitting in less than ten proceedings. I served as Chair in three proceedings. I cannot provide additional details because these matters are strictly confidential.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

I have not written any opinions.

- e. Provide a list of all cases in which certiorari was requested or granted.

None.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If

any of the opinions listed were not officially reported, provide copies of the opinions.

None.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

None.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None.

4. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an “automatic” recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I neither recused myself sua sponte nor was I asked to recuse myself as a member of the Hearing Committee of the Disciplinary Board of the Pennsylvania Supreme Court or as a special master.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a position or played a role in a political campaign, other than serving as a host or co-host for fundraisers supporting the following candidates, listed in reverse chronological order: Robert P. Casey for United States Senator (2012, 2011, 2010, 2006); Stewart J. Greenleaf, Jr. for County Controller of Montgomery County, Pennsylvania (2011); Bruce L. Castor for County Commissioner of Montgomery County, Pennsylvania (2011, 2007); Stewart J. Greenleaf, Sr. for Pennsylvania State Senator (2010); Carolyn T. Carluccio for Judge on the Court of Common Pleas for Montgomery County, Pennsylvania (2009); and Adam Zucker and Joseph Palmer for Township Supervisors for Whitpain Township, Pennsylvania (2009).

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From August 1987 to August 1988, I served as a Law Clerk to the Delaware Court of Chancery, Dover, Delaware, including the sole law clerk to Vice Chancellor Maurice A. Hartnett III.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature

of your affiliation with each.

1988 – 1990
 Elliott Mannino & Flaherty, P.C.
 1800 One Meridian Plaza
 Philadelphia, Pennsylvania 19103
 Associate attorney

1990 – present
 Elliott Greenleaf & Siedzikowski, P.C.
 925 Harvest Drive, Suite 300
 Blue Bell, Pennsylvania 19422
 (formerly in Philadelphia, Pennsylvania)
 Associate Attorney (1990 – 1995)
 Shareholder (1995 – present)
 Co-Hiring Shareholder (1995 – present)
 Corporate Secretary (2000 – present)
 Director (2000 – present)
 Managing Shareholder of Delaware office (2011 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator. I have served as an unpaid Chair of Arbitration Panels in the Court of Common Pleas of Montgomery County in civil matters involving less than \$50,000. I provided this service in approximately fifteen matters from 2000 to 2005 at the Montgomery County Courthouse, Norristown, Pennsylvania. None of these civil matters were appealed or resulted in any published orders.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Following my judicial clerkship, I joined Elliott Mannino and Flaherty, P.C. as an associate from 1988 to 1990. My practice focused on matters involving the representation of special committees and those involving the fiduciary duties of directors and officers of Pennsylvania and Delaware corporations. My practice at that time was almost entirely litigation, with representations in commercial and shareholder matters.

As an associate at Elliott Greenleaf & Siedzikowski, P.C. from 1990 to 1995, my practice continued to develop in the representation of corporate directors and officers and also focused on financial matters and the

representations of lenders and banks, including actions brought under the Racketeer Influenced and Corrupt Organizations Act. I practiced in matters in the United States District Courts and the United States Bankruptcy Courts.

Since 1995, as a Shareholder at Elliott Greenleaf & Siedzikowski, P.C., my practice has continued to focus on commercial litigation. Over these past nineteen years, I have represented clients in class and derivative litigations, major personal injury, white collar and regulatory investigations. I also have provided fiduciary counseling to boards of public, private, and non-profit entities.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Throughout my career, my clients have included individuals, business entities, non-profits, entrepreneurs, developers, investors and unions. I have not specialized in any specific area.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Throughout my career, I have appeared frequently in trial and appellate courts on a variety of matters. Over 90% of my practice is in litigation in trial and appellate courtrooms throughout the United States, with a particular focus on the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals. The remaining 10% of my practice has involved corporate, employment and fiduciary counseling to directors, managers and officers of privately held companies. Over the last 26 years, my practice has been focused primarily on civil proceedings, but there have been years where over 10% of my practice was in federal criminal matters. I have provided estimates based on my overall career below.

- i. Indicate the percentage of your practice in:

1. federal courts:	75%
2. state courts of record:	25%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	85%
2. criminal proceedings:	15%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather

than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Based on my review of records available, I have tried 30 cases in courts of record to final decision. I have been lead counsel in 21 of these cases, co-lead counsel in three of these cases, and associate counsel in six of these cases. Ten of these cases were tried to jury, and 20 were bench trials.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 34 % |
| 2. non-jury: | 66 % |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have been a member of the Bar of the United States Supreme Court for over 12 years. I do not recall any involvement in a matter before the United States Supreme Court.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Ciccarone v. Marchese, Inc. et al.*, C.A. No. 03-1660, United States District Court for the Eastern District of Pennsylvania before Senior Judge Norma L. Shapiro; 2002 – 2004.

This case involved one of the first and widely publicized certified class actions in the United States District Court for the Eastern District of Pennsylvania under the Fair Credit Reporting Act. I was appointed as co-lead counsel for a class of persons whose identity had been stolen by a car dealership in connection with test drives of automobiles. Thereafter, the car dealership used the social security numbers to place loans in the persons' names, which largely destroyed the credit of hundreds of people. There also was a corresponding criminal trial in state court against the car dealership employees. The car dealership denied coverage

or liability based upon rogue employees. Following extensive discovery, class certification hearings, dispositive motions, and extensive *Daubert* hearings on the novel issue of credit law and restoration remedies, we settled the case on the eve of trial for millions of dollars in damages and the restoration of credit reports for hundreds of persons, as well as equitable relief in the restoration and preservation of the credit ratings.

Co-Lead Counsel:

Cary L. Flitter, Esq.
Flitter Lorenz
450 North Narberth Avenue
Narberth, PA 19072
610-266-7863

Opposing Counsel:

Joseph F. Van Horn, Esq.
(formerly with Bodell Bove Van Horn, Philadelphia, PA)
Fallon Van Horn, LLC
30 S. 15th Street, Suite 600
Philadelphia, PA 19102
215-864-6400

2. *Whitehead v. Vacation Charters et al.*, No. 3764, Court of Common Pleas for Philadelphia County; Judge Gary S. Glazer; 2008 – 2011.

This case involved a challenge under the Pennsylvania Wage Payment and Collection Law for hundreds of individuals who were being misclassified as independent contractors when, under every indicia, they were employees entitled to the benefits of being an employee. I was appointed as lead class plaintiffs' counsel. Following discovery, substantial summary judgment motions, motions in limine, and expert examination, we tried the case to a multi-million dollar verdict and received declaratory and equitable relief following a bench trial. We also obtained federal tax benefits and state insurance premiums typically paid by employers. This case marked the first fully tried class action under the Pennsylvania Wage Payment and Collection Law to be resolved.

Opposing Counsel:

Steven G. Leventhal, Esq.
Rager Rizzo & Darnell LLP
2929 Arch Street, 13th Floor
Philadelphia, PA 19104
215-495-6501

3. *Benevento v. LifeUSA Holding/In re: LifeUSA Holding*, C.A. No. 97-7827, United States District Court for the Eastern District of Pennsylvania before Judge J. Curtis Joyner; 1997 – 2001.

This case involved allegations that Life USA Holding was selling annuities without disclosure of their full terms and concealing the method in which the interest rates were being calculated. I was appointed as lead plaintiff's class counsel for a certified class of hundreds of thousands of senior citizen annuitants in a Multi-District Litigation. I had the opportunity to argue this matter before the Multi-District Panel, as well as be the lead author on the Rule 23(f) Opposition Brief in the United States Court of Appeals for the Third Circuit. Based on our discovery and briefing, the trial court found the defendant's materials to be misleading, ambiguous and confusing. Following discovery, MDL litigation, class certification and appeals, the matter settled with recovery for all the represented parties.

Co-Lead Counsel:

Timothy T. Myers, Esq.
Elliott Greenleaf & Siedzikowski, P.C.
925 Harvest Drive, Suite 300
Blue Bell, PA 19422
215-977-1062

Opposing Counsel:

James Jordan, Esq. & Paul A. Fischer, Esq.
Carlton Fields Jorden Burt (formerly Jorden Burt LLP)
1025 Thomas Jefferson Street, NW, Suite 400 East
Washington, D.C. 20007
202-965-8100

4. *Schneider v. First Commercial Bank of Philadelphia*, No. 95-08318, Court of Common of Montgomery County, Pennsylvania before the Honorable Paul Tressler (ret.)

This case involved my efforts to secure immediate injunctive relief in the context of a corporate control dispute in a Philadelphia bank. I served as co-lead counsel for the shareholders and the former bank chairwoman seeking to enjoin an annual shareholders meeting scheduled by the new management to limit the number of allied shareholders who would be of record to vote on the originally scheduled date for the shareholders meeting. This matter involved then-novel issues of Pennsylvania law on fiduciary duties in the scheduling of shareholder action. We initially obtained an injunction from the trial court prohibiting a meeting on the scheduled date of the shareholders meeting, and the Pennsylvania Superior Court upheld that Order on an emergency appeal. Accordingly, the shareholders and former chairwoman succeeded in rescheduling the shareholders vote on a date, which would include a broader range of shareholders of record.

Co-Lead Counsel:

John M. Elliott, Esq.
Elliott Greenleaf & Siedzikowski, P.C.

925 Harvest Drive, Suite 300
Blue Bell, PA 19422
215-977-1004

Opposing Counsel:
James J. Rodgers, Esq.
Dilworth Paxson LLP
1500 Market Street,
Philadelphia, PA 19102
215-575-7143

5. *Constitution Bank v. Paine Webber Inc., et al.*, No. 91-5175. United States District Court for the Eastern District of Pennsylvania before Judge William H. Yohn; 1991 – 1993.

This case involved the investigation and prosecution of claims against a major brokerage house and its principals concerning their involvement in the development of the Mt. Ascutney Ski Resort in Vermont. I served as co-lead counsel for Constitution Bank, a small bank in Pennsylvania, which lent millions of dollars for the furtherance of this development based on the representations and guarantees of persons involved in the securities and harness racing businesses. Eventually, we brought a case under the Racketeer Influenced and Corrupt Organizations Act against the securities house and its senior executives, and third parties involved arising from the misrepresentations and non-disclosures for the syndication of these properties. Notably, the borrowers on this debt had already filed bankruptcy, leaving this small bank without remedy unless it pursued those who sponsored this conduct. Following extensive counterclaims and third party claims, extensive discovery throughout the northeastern United States, and multiple hearings, the plaintiff bank recovered millions of dollars from the securities professionals and third parties.

Co-Lead Counsel:
John M. Elliott, Esq.
Elliott Greenleaf & Siedzikowski, P.C.
925 Harvest Drive; Suite 300
Blue Bell, PA 19422
215-977-1004

Lead Opposing Counsel:
A. Hugh Scott, Esq.
Choate Hall & Stewart
Exchange Place, 53 State Street
Boston, MA 02109
617-248-5250

6. *Bonfield VII, Ltd. v. Musser et al.*, No. 05-8020, Court of Common Pleas of Delaware County, Pennsylvania before Judge James F. Proud; 2005 – 2006.

This test case involved the scope of Pennsylvania's Fraudulent Conveyance Act as applied to a transfer of assets between spouses. I represented the ex-wife in the proceedings. In this case, a former billionaire, Mr. Musser, transferred assets to his then wife. Thereafter, they divorced and creditors sought to obtain the assets obtained by his ex-wife under their interpretation of the Fraudulent Conveyance Act. I served as co-lead trial counsel, and principal author of all submissions, in this case that went to an equity bench trial concerning the scope of Pennsylvania's Fraudulent Conveyance Act. The case settled for millions of dollars in retained assets for my client in mid-trial.

Co-Lead Trial Counsel:
John M. Elliott, Esq.
Elliott Greenleaf & Siedzikowski, P.C.
925 Harvest Drive; Suite 300
Blue Bell, PA 19422
215-977-1004

Opposing Counsel:
Richard A. Sprague, Esq. and Joseph Podraza, Esq.
Sprague & Sprague
Suite 400, The Wellington Building
135 South 19th Street
Philadelphia, PA 19103
215-561-7681

Thomas E. Zemaitis, Esq.
Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103
215-981-4000

7. *Boudwin v. Seitz et al.* No. 99-13191, Court of Common Pleas of Delaware County before Judge George A. Pagano, 1999 – 2001

This case involved the investigation and trial regarding the theft of software source code that eventually became a prototype for Microsoft Outlook. I was lead jury trial counsel for the software developer seeking damages for the conversion of source code that he prepared and that was used in one of the first developed enterprised software programs. After extensive discovery in Eastern Pennsylvania and in California, several summary judgment motions and expert testimony regarding the copying of source code, the case settled at the end of plaintiff's case before the jury for a substantial confidential recovery to the software developer.

Opposing Counsel:

Matthew A. Taylor, Esq. and James H. Steigerwald, Esq.
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103
215-979-1140

Phillip Katauskas, Esq.
(formerly with Pepper Hamilton, LLP, Philadelphia, PA)
United States Department of Justice
Criminal Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
202-514-2000

8. *In re One Meridian Plaza Fire Litigation*., Nos. 91-2171; 2172; 2226; 2227; 2374; 2545; 2546; and 2547, United States District Court for the Eastern District of Pennsylvania before Judge Ronald L. Buckwalter; C.A.; 1991 – 1996.

This case involved the effort to recover damages for the thousands of persons harmed and displaced by the largest office high rise fire in Philadelphia history. I was appointed as class counsel, along with three more senior members of my law firm, for the class of persons and businesses injured in this fire. This case involved issues concerning the jurisdictional scope of the Foreign Sovereign Immunities Act because one of the owners of the high rise building was a Dutch Government Pension Fund. The case also involved over fifty third party claims, discovery from over one hundred witnesses and extensive pretrial motions to dismiss and for summary judgment. Following discovery, we secured a confidential substantial recovery for the plaintiffs.

Co-Counsel:

John M. Elliott, Esq.
Henry F. Siedzikowski, Esq.
Timothy T. Myers, Esq.
Elliott Greenleaf & Siedzikowski, P.C.
925 Harvest Drive; Suite 300
Blue Bell, PA 19422
215-977-1000

Opposing Counsel:

Stephen A. Cozen, Esq.
Robert W. Hayes, Esq.
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
215-665-2000

9. *Delaware Nation v. Pennsylvania*, C.A. No. 04-0166, United States District Court for the Eastern District of Pennsylvania before Senior Judge James McGirr Kelly; 2004 – 2006.

This case involved the rights of the Delaware Nation to recover thousands of acres of land in Northampton County, Pennsylvania based upon, among other things, several mid-19th Century treaties. The case also involved an examination of Penn's Walking Purchase and the principles underlying the sovereignty of Native American nations. I served as lead counsel for residents of Forks Township, Pennsylvania. The judge granted summary judgment in favor of the residents of Forks Township. I also argued before the United States Court of Appeals for the Third Circuit, which affirmed the district court's decision. Thereafter, in issues unrelated to Forks Township, the United States Supreme Court denied the Delaware Nation's petition for certiorari. As a result of our efforts, the residents of Forks Township, Pennsylvania, retained their property.

Opposing Counsel:
Thomas B. Fiddler, Esq.
(formerly with Cozen O'Connor, Philadelphia, PA)
White & Williams
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, PA 19103
215-864-7081

10. *Warrington Market, Inc. v. Fleming Companies, Inc. et al.*, C.A. No. 02-0719, United States District Court for the Eastern District of Pennsylvania before Judge Timothy J. Savage; 2002 – 2003.

This case involved the application of common law theories of promissory estoppel and equitable relief under the Equal Credit Opportunity Act (ECOA). Specifically, I represented supermarket owners and their spouses against two multinational companies/lenders who had, after several agreements, decided to close down selling supplies to the supermarket. Further, as a result of various agreements, the husbands and wives were also liable for hundreds of thousands of dollars in guarantees on various debts related to this purchase of supplies. The lead defendant filed bankruptcy weeks before trial, resulting in successful motions to lift the automatic stay. Following discovery in the Eastern District of Pennsylvania and in Oklahoma, I served as lead jury trial counsel. The jury returned a verdict for over \$800,000 under a promissory estoppel theory. The District Court also granted equitable relief under ECOA, raising issues concerning ECOA trials and damages after relief from the Bankruptcy Court's automatic stay.

Lead Opposing Counsel:
Michael J. McCaney, Esq.
(formerly with Flamm, Bacine & Boroff, Blue Bell, PA)
1515 Market Street

Philadelphia, PA 19102
215-496-0177

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to my litigation experience, I have defended and advised executives facing civil and criminal investigations in over fourteen different securities, banking and regulatory matters. The object of these representations is to resolve the concerns in an effective manner and allow the client to continue in business. These representations involve the analysis and effective presentation of extensive materials, interviews and negotiation, including terms of *Wells* submissions with federal officials in Philadelphia, Florida and Washington. I have negotiated with federal and state banking authorities on varied aspects of management, financial viability and obligations to depositors. I also prepared and presented substantial bank and wire fraud matters on behalf of clients to enforcement authorities, including in a matter recently resulting in the conviction of entities and individuals defrauding financial institutions of over \$40 million in real estate financings.

The Computer Fraud and Abuse Act, 18 U.S.C. §1030, has been interpreted by courts in a manner that allows it to be used as a commercial tort with attorney's fees and e-discovery protocols. I have been lead or co-lead counsel in a series of cases in the United States District Court for the Eastern District of Pennsylvania and in the Court of Appeals which have defined parameters and set e-discovery protocols, including most significantly: *Grant Manufacturing v. McIlvain*, No. 10-1029-Sanchez, J. (jurisdictional damages and "authorized" access); *GWR v. Baez*, No. 07-1103 – Rufe, J. (CD-Rom as a "computer device"); *Feinberg v. Eckelmeyer*, No. 09-1536 – Yohn, S.J. ("authorized" access v. "exceeded" access); *American Homecare Supply v. McGoldrick*, No. 07-630-Diamond, J. (damage without removed or impaired data); and, *Elliott Greenleaf v. Balaban*, No. 12-0674-Savage, J. (cloud interactive storage as a "computer device").

I have never been a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

None.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am neither aware of, nor eligible for, receipts from any deferred income arrangements, stock, options, uncompleted contracts or other future benefits which I expect to derive from existing or previous relationships.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments or agreements to pursue any outside employment if confirmed. As to volunteer Board service on non-profit entities, I would carefully review the obligations imposed upon federal judges and in consultation with the Chief Judge and the Court, would resign from any volunteer Board position inconsistent with my obligations to the Court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would recuse from any case in which I, or my present law firm, had previously worked and any case in which I had an interest raising an appearance of bias or which presented a ground on which my impartiality could reasonably be questioned. I am not aware of any family member that has, or would have, a matter in the courts. If a potential conflict arose, I would apply the

standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine the appropriateness of recusal. Further, I would disclose to all parties if there was any potential issue in a matter arising before me.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

To avoid any potential conflict of interest if I were confirmed, I would consult the applicable law, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, and prepare a detailed catalog of matters, clients and other persons to the Clerk of the Court so that I could timely review and address any potential conflicts of interest and avoid any delay in resolving the parties' dispute. As matters developed, I would request, and consider, any factors raised by counsel or parties.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My pro bono service began in 1988 with the Philadelphia VIP program, resulting in two non-jury landlord tenant trials in the Philadelphia Municipal Court involving indigent persons losing their tenancy. Upon moving my principal office in 1991, I became involved in Legal Aid of Southeastern Pennsylvania, including serving as an advisor to the Board and eventual Board Member assisting management in negotiating for additional funding. In 2012, the Pennsylvania Bar Association honored me with its Exemplary Pro Bono Award. My pro bono service also includes several long term representations as a child advocate for the Montgomery Child Advocacy Project, where I have represented children before the Court of Common Pleas and Magisterial District Justices in criminal, dependency and civil matters. Further, the focus of my multi-year leadership of both the Welcoming Center for New Pennsylvanians and the Montgomery Bar Foundation was on involving the corporate and commercial lawyers in the representation of indigent persons.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department

regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In January 2013, I submitted my application to the bipartisan Federal Judicial Nomination Advisory Panel for the United States District Court for the Eastern District of Pennsylvania, convened by Senators Casey and Toomey. On April 4, 2013, I interviewed with the Advisory Panel in Philadelphia, Pennsylvania. On August 6, 2013, a member of Senator Casey's staff advised me by telephone that I was being considered for nomination. Since that day, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 18, 2013, I met with Senator Toomey and his staff counsel in Washington, D.C. On January 21, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 16, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Mark, Kearney A.	2. Court or Organization United States District Court for the E.D. Pa.	3. Date of Report 06/16/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Judge, U.S. District Court for the E.D. Pa.	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 06/16/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 05/30/2014
7. Chambers or Office Address 925 Harvest Drive; Suite 300, Blue Bell, PA 19422		
<p align="center">IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.</p>		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. President and Director	Pennsylvania Bar Institute
2. Vice President and Director	Montgomery Bar Foundation
3. Director	Legal Aid of Southeastern Pennsylvania
4. Director	Historical Society for the US District Court for the Eastern District of Pennsylvania
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT
 Page 2 of 7

Name of Person Reporting	Date of Report
Mark, Kearney A.	06/16/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2012	Elliott Greenleaf & Siedzikowski, P.C. Wages	\$313,612.00
2. 2013	Elliott Greenleaf & Siedzikowski, P.C. Wages	\$289,170.81
3. 2014	Elliott Greenleaf & Siedzikowski, P.C. Wages	\$119,778.66
4.		

B. Spouse's Non-Investment Income *- If you were married during any portion of the reporting year, complete this section.
(Dollar amount not required except for honoraria.)*
☒ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS *- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
 Page 3 of 7

Name of Person Reporting	Date of Report
Mark, Kearney A.	06/16/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	EGS 401k Plan	Employer 401k plan Promissory Note from April 1997, prepayment upon departure from employment	J
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
 Page 4 of 7

Name of Person Reporting	Date of Report
Mark, Kearney A.	06/16/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code I (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Fidelity GNMA Fund	A	Int./Div.	K	T					
2. Fidelity Gov. Money Market	A	Int./Div.	K	T					
3. Fidelity Income Adv. Annuity	A	Int./Div.	J	T					
4. Fidelity Portfolio 2018	A	Int./Div.	K	T					
5. First Eagle Global Fund	A	Int./Div.	K	T					
6. First Eagle Overseas Fund	A	Int./Div.	L	T					
7. Jensen Quality Growth Fund	A	Int./Div.	L	T					
8. Perkins Mid Cap Value Fund	A	Int./Div.	L	T					
9. PIMCO Real Return Fund	A	Int./Div.	K	T					
10. Sentinel Common Stock Fund	A	Int./Div.	M	T					
11. T Rowe Price Equity Income Fund	B	Int./Div.	N	T					
12. T Rowe Price Equity Index 500 Fund	A	Int./Div.	M	T					
13. T Rowe Price Portfolio for College	B	Int./Div.	K	T					
14. T Rowe Price US Treasury Money Fund	A	Int./Div.	J	T					
15. Vanguard 500 Index Fund	A	Int./Div.	L	T					
16. Wells Fargo Avtg Growth I	B	Int./Div.	M	T					
17. Elliott Greenleaf & Siedzikowski, P.C.		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessed W = Estimated	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

FINANCIAL DISCLOSURE REPORT
 Page 5 of 7

Name of Person Reporting	Date of Report
Mark, Kearney A.	06/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Santander Bank Interest Bank Account	A	Interest	J	T					
19. Knights of Columbus Whole Life Insurance Policy	A	Dividend	K	T					
20. Ally Bank Midvale Utah CD	A	Int./Div.	J	T					
21. Boston Private Bank & Trust Co CD	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	U = Book Value				

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Mark, Kearney A.	06/16/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Mark, Kearney A.	06/16/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ Kearney A. Mark

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		35	094	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	114	860	Notes payable to relatives			
Unlisted securities				Notes payable to others		12	646
Accounts and notes receivable:				Accounts and bills due		1	500
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		107	653
Real estate owned – personal residence		525	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000				
Cash value-life insurance		15	700				
Other assets itemize:							
Elliott Greenleaf & Siedzikowski, PC		1	000				
				Total liabilities		121	799
				Net Worth	1	619	855
Total Assets	1	741	654	Total liabilities and net worth	1	741	654
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**Listed Securities

Fidelity GNMA Fund	\$ 30,312
Fidelity Government Money Market	20,951
Fidelity Income Advantage annuity	11,785
Fidelity Portfolio 2018	30,132
First Eagle Global Fund	18,378
First Eagle Overseas Fund	53,044
Jensen Quality Growth Fund	55,140
Perkins Mid Cap Value Fund	87,830
PIMCO Real Return Fund	50,657
Sentinel Common Stock Fund	109,204
T. Rowe Price Equity Income Fund	274,987
T. Rowe Price Equity Index 500 Fund	166,347
T. Rowe Price Portfolio for College	15,327
T. Rowe Price US Treasury Money Fund	2,881
Vanguard 500 Index Fund	84,272
Wells Fargo Advantage Growth Fund	103,613
Total Listed Securities	<u>\$1,114,860</u>

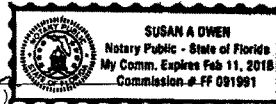
AFFIDAVIT

I, Mark A. Keeney, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

June 16, 2014
(DATE)

Mark A. Keeney
(NAME)

Susan A. Owen
(NOTARY)



UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Joseph F. Leeson, Jr.

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Eastern District of Pennsylvania

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Permanent Office Address (a fire occurred at my office building on February 9, 2014 – our offices have been temporarily relocated during reconstruction):

Leeson, Leeson & Leeson
70 East Broad Street
P.O. Box 1426
Bethlehem, Pennsylvania 18016

Temporary Office Address Effective February 17, 2014 (until completion of reconstruction of permanent office):

Leeson, Leeson & Leeson
One East Broad Street, Suite 320
P.O. Box 1426
Bethlehem, Pennsylvania 18016

4. **Birthplace:** State year and place of birth.

1955; Allentown, Pennsylvania

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1977 – 1980, Catholic University of America Law School; J.D., 1980
1973 – 1977, DeSales University; B.A. (cum laude), 1977

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have

been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1980 – Present
Leeson, Leeson & Leeson
Attorneys At Law
70 East Broad Street
P.O. Box 1426
Bethlehem, Pennsylvania 18016
Partner

1981 – Present
American Arbitration Association
230 South Broad Street
Philadelphia, Pennsylvania 19102
Arbitrator

2006 – Present
East Allen Township
5344 Nor-Bath Boulevard
Northampton, Pennsylvania 18067
Solicitor

2011 – Present
Bethlehem Township
4225 Easton Avenue
Bethlehem, Pennsylvania 18020
Tax Hearing Officer

2011 – Present
Borough of Bangor
197 Pennsylvania Avenue
Bangor, Pennsylvania 18013
Alternate Solicitor for Planning and Zoning

2013 – Present
City of Easton Board of Ethics
One South Third Street
Easton, Pennsylvania 18042
Solicitor

2011 – 2013
East Allen Township Municipal Authority
5340 Nor-Bath Boulevard

Northampton, Pennsylvania 18067
Solicitor

2004 – 2013
Northampton County General Purpose Authority
669 Washington Street
Easton, Pennsylvania 18042
Solicitor

2004 – 2010
City Council of the City of Bethlehem
10 East Church Street
Bethlehem, Pennsylvania 18018
Member of City Council
Chair of Finance Committee (2007 – 2010)
Vice President (2008 – 2010)

1991 – 2004
Northampton County Industrial Development Authority
669 Washington Street
Easton, Pennsylvania 18042
Solicitor

1998 – 2003
City of Bethlehem
10 East Church Street
Bethlehem, Pennsylvania 18018
Solicitor

1992 – 1997
City Council of the City of Bethlehem
10 East Church Street
Bethlehem, Pennsylvania 18018
Solicitor

1985 – 1991
Personnel Appeals Board of Northampton County
669 Washington Street
Easton, Pennsylvania 18042
Solicitor

1974 – 1976
Northampton County Government Study Commission
669 Washington Street
Easton, Pennsylvania 18042
Member, Board of Commissioners

Other affiliations (uncompensated unless otherwise indicated)

1980 – Present
Damar Construction, Inc.
70 East Broad Street
P.O. Box 1426
Bethlehem, Pennsylvania 18016
(Entity that owns law firm building)
President and Member of Board of Directors (50% Owner)

1980 – Present
DeSales University
2755 Station Avenue
Center Valley, Pennsylvania 18034
Member of President's Council

2001 – Present
Lehigh Valley Public Telecommunications Corporation
801 East First Street
Bethlehem, Pennsylvania 18015
Board Chair (2004 – 2006)
Board Member (2001 – Present)

2004 – Present
Carisal Investment Holdings B.V.I., Ltd.
2716 Barton Creek Boulevard #624
Austin, Texas 78735
(Owner of 1% of company)

2009 – Present
Conestoga Title Insurance Company
137-139 East King Street
Lancaster, Pennsylvania 17602
Title Insurance Agent (compensated)

2011 – Present
Janet Johnston Housenick and William D. Housenick Memorial Foundation
70 East Broad Street
P.O. Box 1426
Bethlehem, Pennsylvania 18016
Board Chair and President (compensated)

2004 – 2012
Pennsylvania Catholic Conference
223 North Street

P.O. Box 2835
Harrisburg, Pennsylvania 17105
Member of Administrative Board of Governors

1991 – 2010
Lehigh-Northampton Airport Authority
3311 Airport Road
Allentown, Pennsylvania 18109
Board Chair (1995 – 1997)
Board Member (1991 – 2010)

1995 – 1999
Notre Dame Church
1861 Catasauqua Road
Bethlehem, Pennsylvania 18018
Member of Parish Council

1993 – 1999
Pennsylvania Public Television Network Commission
State Capitol Building
Harrisburg, Pennsylvania
Member of Board of Commissioners

1984 – 1998
Lehigh Valley Community Foundation (formerly Bethlehem Area Foundation)
968 Postal Road, Suite 100
Allentown, Pennsylvania 18109
Board Chair (1995 – 1997)
Finance Officer (1984 – 1986)
Board Member (1984 – 1998)

1991 – 1994
United Cerebral Palsy of Bethlehem Endowment Fund
336 West Spruce Street
Bethlehem, Pennsylvania 18018
Board Member

1981 – 1985
Bethlehem Community Concert Association, Inc.
10 East Church Street
Bethlehem, Pennsylvania 18018
Board Member

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social

security number) and type of discharge received, and whether you have registered for selective service.

I did not serve in the military. I registered for selective service upon turning 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Martindale Hubbell Legal Directory, AV Preeminent Peer Review Rating (2012 – Present)
 National Board of Trial Advocacy, Civil Trial Advocate Certification (2007 – Present)
 Pennsylvania “Super Lawyer” (2010, 2013)
 Distinguished Alumni Award, DeSales University (2007)
 Boss of the Year Award, Lehigh-Northampton Counties Legal Secretaries Association (1989)
 Young Man of the Year of the City of Bethlehem, Bethlehem Area Jaycees (1988)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Association for Justice (formerly Association of Trial Lawyers of America) (1982 – Present)
 Bar Association of the District of Columbia (1998 – Present)
 Bar Association of Lehigh County, Pennsylvania (1985 – Present)
 Defense Research Institute (1982 – Present)
 Federal Bar Association (1991 – Present)
 National Diocesan Attorneys Association (2006 – Present)
 Northampton County Bar Association, Pennsylvania (1980 – Present)
 Pennsylvania Association for Justice (1982 – Present)
 Pennsylvania Bar Association (1980 – Present)
 Pennsylvania Defense Institute (1982 – Present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania, 1980
 District of Columbia, 1998

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

United States Supreme Court, 1986
 United States Court of Appeals for the Third Circuit, 1981
 United States Court of Appeals for the Fifth Circuit, 1981
 United States Court of Appeals for the Sixth Circuit, 1992
 United States Court of Appeals for the Eleventh Circuit, 1981
 United States Court of Appeals for the District of Columbia Circuit, 1981
 United States Court of Appeals for the Federal Circuit, 1983
 United States Court of Appeals for the Armed Forces, 1981
 United States Court of Federal Claims, 1981
 United States Tax Court, 1981
 United States Court of International Trade, 1981
 United States District Court for the Eastern District of Pennsylvania, 1981
 United States District Court for the Middle District of Pennsylvania, 1981
 United States District Court for the Western District of Pennsylvania, 1989
 United States District Court for the District of Columbia, 1999

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Bethlehem Area Chamber of Commerce (1981 – 2000)
 Bethlehem Area Jaycees (1980 – 1995)
 Treasurer (1984 – 1986)
 Bethlehem Community Concert Association, Inc. (1981 – 1985)
 Boy Scouts of America, Troop 352 of Bethlehem (2005 – 2011)
 Assistant Scoutmaster (2005 – 2011)
 Damar Construction, Inc. Board of Directors (1980 – Present)
 President (1980 – Present)
 DeSales University President's Council (1980 – Present)
 Janet Johnston Housenick and William D. Housenick Memorial Foundation (2011 – Present)
 Board Chair and President (2011 – Present)
 Knights of Columbus (2011 – Present)
 Lehigh-Northampton Airport Authority Board of Governors (1991 – 2010)
 Board Chair (1995 – 1997)
 Treasurer (2003 – 2005)

Lehigh Valley Community Foundation (formerly Bethlehem Area Foundation)
 (1984 – 1998)
 Finance Officer (1984 – 1986)
 Board Chair (1995 – 1997)
 Lehigh Valley Public Telecommunications Corporation (2001 – Present)
 Board Chair (2004 – 2006)
 Northampton County Government Study Commission (1974 – 1976)
 Notre Dame Church (1994 – present)
 Parish Council Member (1995 – 1999)
 Pennsylvania Catholic Conference (2004 – 2012)
 Pennsylvania Public Television Network Commission (1993 – 1999)
 Pennsylvania Society (1995 – Present)
 Saucon Valley Country Club (1991 – Present)
 St. Thomas More Society of the Diocese of Allentown (2009 – Present)
 Union League of Philadelphia (1992 – Present)
 United Cerebral Palsy Endowment Fund (1991 – 1994)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Knights of Columbus, of which I have been a member since 2011, consists of Catholic men over the age of 18. There is a corresponding organization for women. During the first four years that I was a member of the Bethlehem Area Jaycees, membership was restricted to men. Prior to my joining the Saucon Valley Country Club and the Union League of Philadelphia, membership was restricted to men. Other than those that have been noted, to the best of my knowledge, none of the other organizations listed in my response to Question 11a discriminate or have formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

With Bob Cohen, Letter to the Editor, *Respect Needed During Time of Exploration*, MORNING CALL (Aug. 13, 2004). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

With Rhoda E. Allen, Frederick H. Bielefeld, James F. Coughlin, Jr., Francis E. Cronin, Daniel R. Gilbert, William F. Moran, Jr., Juliette C. Reinicker, Eric R. Shimer, Charles A. Smith and Carl E. Sunnergren, *Home Rule Charter for Northampton County and Northampton County Government Study Commission Final Report* (Jan. 9, 1976). Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

2006 – Present: As Solicitor for the East Allen Township, I have participated in nearly all of the bi-weekly meetings of the Board of Supervisors of East Allen Township. I offered legal opinions during the meetings. Minutes available at [http://www.eatwp.org/BOS Meeting Minutes.html](http://www.eatwp.org/BOS%20Meeting%20Minutes.html).

2006 – Present: As Solicitor for the East Allen Township, I have participated in nearly all of the monthly meetings of the Planning Commission of East Allen Township. I offered legal opinions during the meetings. Minutes available at [http://www.eatwp.org/Planning Meeting Minutes.html](http://www.eatwp.org/Planning%20Meeting%20Minutes.html).

2011 – 2013: As Solicitor for the East Allen Township Municipal Authority, I attended and participated in nearly all of the monthly meetings of the Board of Directors of the East Allen Township Municipal Authority. I offered legal opinions during the meetings. Meeting minutes supplied where available.

2004 – 2013: As Solicitor for the Northampton County General Purpose Authority, I attended and participated in nearly all of the monthly meetings of the Board of Directors of the Northampton County General Purpose Authority. I offered legal opinions during the meetings. I have no notes, transcripts or recordings.

Proposed Bethlehem Human Relations Commission Ordinance: Legal Opinion Memorandum to Bethlehem City Council (May 11, 2011). Copy supplied.

2004 – 2010: As a member of the City Council of the City of Bethlehem, I participated in nearly all of the bi-weekly meetings of the City Council. I offered extemporaneous remarks during the meetings about City of Bethlehem

government matters and proposed ordinances and resolutions. On the occasions when I sponsored municipal ordinances and resolutions, I generally spoke in support of them during City Council meetings. These remarks were made extemporaneously and not from written text. During my six years on the City Council, these ordinances and resolutions included, but were not limited to, efforts to strengthen financial monitoring and control over City expenditures, efforts to strengthen monitoring and control over municipal borrowing, establishing salary levels for City officials, authorization for leasing City owned real estate, approvals of certificates of appropriateness for building and construction projects within historic districts, budget authorizations and budget item transfers. Minutes available at http://www.bethlehem-pa.gov/city_council/agenda_minutes/.

1991 – 2010: As a member of the Board of Governors, I participated in nearly all of the monthly meetings of the Lehigh-Northampton Airport Authority. I offered extemporaneous remarks during the meetings about Airport Authority matters, proposed budgets and air travel service. I have no notes, transcripts or recordings.

1998 – 2003: As Solicitor for the City of Bethlehem, I participated in nearly all of the bi-weekly meetings of the City Council of the City of Bethlehem. I offered legal opinions during the meetings. Minutes available at http://www.bethlehem-pa.gov/city_council/agenda_minutes.

1992 – 1997: As Solicitor for the City Council of the City of Bethlehem, I participated in nearly all of the bi-weekly meetings of the City Council of the City of Bethlehem. I offered legal opinions during the meetings. Minutes available at http://www.bethlehem-pa.gov/city_council/agenda_minutes

1993 – 1999: As a member of the Board of Commissioners, I participated as in nearly all of the quarterly meetings of the Pennsylvania Public Television Commission. I offered extemporaneous remarks during the meetings about public television matters. I have no notes, transcripts or recordings.

Letter to President Reagan from Northampton County Democratic Committee, regarding need for appointment of a Northampton attorney or judge to the Eastern District of Pennsylvania, 1986. I have been unable to obtain a copy of the letter.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

On January 2, 2014, I offered congratulatory remarks on the occasion of the retention ceremony of Judge Emil Giordano, as a Judge of the Court of Common Pleas of Northampton County, Pennsylvania. I have no notes, transcripts or recordings, but press coverage supplied. The address of the Court of Common Pleas of Northampton County is 669 Washington Street, Easton, Pennsylvania 18042.

On June 27, 2012, I participated in the "Let Religious Freedom Ring" forum at Notre Dame Church in Bethlehem, Pennsylvania. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the Notre Dame Church is 1861 Catasauqua Road, Bethlehem, Pennsylvania 18018.

In 2005 and 2009, I participated in a total of four candidate forums during my two races for the City Council of the City of Bethlehem. I believe that the League of Women Voters sponsored each of these forums, which took place shortly before the primary and general elections in May and November of 2005 and 2009. The forums included candidates for other local offices. Each candidate received a brief time for introductory comments and then answered questions from the audience. I have no notes, transcripts or recordings. The League of Women Voters has no physical address.

In May and November of 2005 and 2009, I also met with groups of constituents preceding the primary and general elections in order to discuss the status of city government. These meetings took the form of brief introductory comments, followed by questions and answers. I do not recall the dates of these meetings, and I have no notes, transcripts or recordings.

On January 20, 2006, I offered congratulatory remarks on the occasion of the swearing-in of Judge Anthony S. Beltrami, as a Judge of the Court of Common Pleas of Northampton County, Pennsylvania. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the Court of Common Pleas of Northampton County is 669 Washington Street, Easton, Pennsylvania 18042.

On November 30, 2005, I participated in a "Life on the Docket: The Role and Influence of the U.S. Courts" panel forum at DeSales University in Center Valley, Pennsylvania. I have no notes, transcripts or recordings. The address of DeSales University is 2755 Station Avenue, Center Valley, Pennsylvania 18034.

October 10, 1990: Guest Speaker, "Declaratory Judgment Actions," Lehigh-Northampton Counties Legal Secretaries Association, Easton, Pennsylvania. I discussed elements of a declaratory judgment action, the purposes for which declaratory judgment actions are used, and the judicial relief available in declaratory judgment actions. I have no notes, transcripts or recordings. The

address of the Lehigh-Northampton Counties Legal Secretaries Association is 3414 Nicholas Court, Easton, Pennsylvania 18045.

June 26, 1985: Guest Speaker, Naturalization Ceremonies at the Northampton County Courthouse, Easton, Pennsylvania. I discussed the importance of free speech and free elections. I have no notes, transcripts or recordings. The address of the Northampton County Courthouse is 669 Washington Street, Easton, Pennsylvania 18042.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have to the best of my ability identified all items called for in the question, including conducting a thorough review of my files and records and searches of publicly available electronic databases. In my capacities as a former elected official, a former appointed official, a former leader of civic organizations and a municipal solicitor, I periodically have given interviews to local print media centering on matters involving the entity I was associated with. In my former service as Solicitor and later service as a City Council member, I would often give brief interviews to multiple members of the print media following the conclusion of City Council meetings. Many of these interviews, and news articles were reprinted in multiple outlets. I have done my best to identify all such interviews, but there may be interviews that I cannot recall or could not locate in my search. I have supplied a list that represents what I believe to be a complete list of all such interviews, as well as copies of those interviews.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

From 2011 to the present, I have served part-time as an appointed tax hearing officer for the Township of Bethlehem. My responsibility is to hear and decide appeals by taxpayers from assessments of business privilege and mercantile tax, and to determine if the assessment was proper, or improper, based on the facts and the law.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over approximately eight cases that have gone to judgment.

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%

civil proceedings:	100%
criminal proceedings:	0%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

As a tax hearing officer, all of my opinions are unreported decisions that are disseminated only to the parties involved in the case. Thus, there are no citations to my opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *In the Matter of the Tax Appeal of Sure-Lok, Inc. and Sure-Lok International, Inc., No. 2-2-11A.* Copy of my opinion is supplied.

The taxpayer appealed from a tax assessment. Following a hearing at which the Township and the taxpayer both presented evidence, I found that the taxpayer was involved in manufacturing of vehicle safety restraint systems. Because the taxpayer was involved in manufacturing, I found that the taxpayer qualified for an exemption provided for by statute. The appeal of the taxpayer was sustained, and the assessment of tax was rescinded.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
Vaughn A. Terrinoni, Esquire
3976 Township Line Road
Bethlehem, Pennsylvania 18020
(610) 865-5950

2. *In the Matter of the Tax Appeal of General Supply Company, No. 2-5-11.* Copy of my opinion is supplied.

The taxpayer appealed from a tax assessment. Following a hearing at which the Township and the taxpayer both presented evidence, I found that the taxpayer was involved in wholesale sales of door frames, doors and door hardware. Because the taxpayer was involved in wholesale sales, I found that the taxpayer qualified

for an exemption provided for by statute. The appeal of the taxpayer was sustained, and the assessment of tax was rescinded.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
Abraham P. Kassis, Esquire
2851 Baglyos Circle, Suite 200
Bethlehem, Pennsylvania 18020
(610) 954-0900

3. *In the Matter of the Tax Appeal of Kyle A. Emerich and Emerich Center for Chiropractic Neurology, No. 2-1-12.* Copy of my opinion is supplied.

The taxpayer appealed from a tax assessment. Following a hearing at which the Township and the taxpayer both presented evidence, I found that the taxpayer was subject to the tax. The taxpayer argued that some of the revenues that were taxed were generated by its business from another office located outside Bethlehem Township, and were not subject to tax. I found that the taxpayer did not produce sufficient evidence to be able to trace what revenues were generated by the Township office, and what revenues were generated by the taxpayer's office outside the Township. Accordingly, the appeal was denied.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
None

4. *In the Matter of the Tax Appeal of DG Properties, Inc., No. 2-2-12.* Copy of my opinion is supplied.

The taxpayer appealed from the assessment of penalties and interest, but did not appeal its liability for payment of the tax. Following a hearing at which the Township and the taxpayer both presented evidence, I found that the taxpayer was responsible for payment of the tax, but that the assessment of the penalties and interest was not proper. The taxpayer proved that it had not received any notice of its responsibility to pay the tax to Bethlehem Township and that it had acted in good faith to pay business privilege and mercantile tax in the full amount of its

gross revenues to another municipality other than Bethlehem Township. The appeal of the taxpayer was sustained, and the assessment of penalties and interest was rescinded.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
Thomas A. Bowen, Esquire
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, Pennsylvania 17101
(717) 234-1090

5. *In the Matter of the Tax Appeal of Flexicon Corporation, No. 2-3-12.* Copy of my opinion is supplied.

The taxpayer appealed from a tax assessment. Following a hearing at which the Township and the taxpayer both presented evidence, I found that the taxpayer was involved in manufacturing custom engineered bulk material handling systems. Because the taxpayer was involved in manufacturing, I found that the taxpayer qualified for an exemption provided for by statute. The appeal of the taxpayer was sustained, and the assessment of tax was rescinded.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
Thomas A. Bowen, Esquire
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, Pennsylvania 17101
(717) 234-1090

6. *In the Matter of the Tax Appeal of Warren Controls, Inc., No. 2-5-12.* Copy of my opinion is supplied.

The taxpayer appealed from a tax assessment. Following a hearing at which the Township and the taxpayer both presented evidence, I found that the taxpayer was involved in manufacturing of precision valves. Because the taxpayer was

involved in manufacturing, I found that the taxpayer qualified for an exemption provided for by statute. The appeal of the taxpayer was sustained, and the assessment of tax was rescinded.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
David M. Backenstoe, Esquire
148 Main Street
Hellertown, Pennsylvania 18055
(610) 838-2255

7. *In the Matter of the Tax Appeal of OfficeMax Incorporated, No. 2-7-12.*
Copy of my opinion is supplied.

The taxpayer appealed, requesting a refund of penalties and interest on taxes paid over a span of two years. The taxpayer also requested the refund of a duplicate tax payment made in a third year. The case was submitted by agreement of the parties on paper, without a hearing. I found that the penalties and interest were properly assessed because the tax was paid late over a span of two years. I also found that there was proof of a duplicate tax payment for year three. The appeal of the taxpayer was denied in part (as to penalties and interest) and sustained in part (awarding refund of a duplicate payment).

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
None

8. *In the Matter of the Tax Appeal of Nobilis, Inc., No. 2-9-12.* Copy of my opinion is supplied.

The taxpayer appealed from a tax assessment. Following a hearing at which the Township and the taxpayer both presented evidence, I found that the tax was properly assessed. The taxpayer argued that the Township had improperly taxed revenue attributed to the New York office of the taxpayer. The Township argued that the tax assessment was properly assessed against revenues attributable to the Bethlehem Township office. I found that the tax assessed was against sales orders

effected, accepted and completed at the Bethlehem Township office. The appeal of the taxpayer was denied.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
None

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *In the Matter of the Tax Appeal of Sure-Lok, Inc. and Sure-Lok International, Inc., No. 2-2-11A.* Copy of my opinion supplied in response to Q13c.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
Vaughn A. Terrinoni, Esquire
3976 Township Line Road
Bethlehem, Pennsylvania 18020
(610) 865-5950

2. *In the Matter of the Tax Appeal of General Supply Company, No. 2-5-11.* Copy of my opinion supplied in response to Q13c.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
Abraham P. Kassis, Esquire
2851 Baglyos Circle, Suite 200

Bethlehem, Pennsylvania 18020
(610) 954-0900

3. *In the Matter of the Tax Appeal of Kyle A. Emerich and Emerich Center for Chiropractic Neurology, No. 2-1-12.* Copy of my opinion supplied in response to Q13c.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
None

4. *In the Matter of the Tax Appeal of DG Properties, Inc., No. 2-2-12.* Copy of my opinion supplied in response to Q13c.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
Thomas A. Bowen, Esquire
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, Pennsylvania 17101
(717) 234-1090

5. *In the Matter of the Tax Appeal of Flexicon Corporation, No. 2-3-12.* Copy of my opinion supplied in response to Q13c.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
Thomas A. Bowen, Esquire
Stevens & Lee
17 North Second Street, 16th Floor

Harrisburg, Pennsylvania 17101
(717) 234-1090

6. *In the Matter of the Tax Appeal of Warren Controls, Inc., No. 2-5-12.* Copy of my opinion supplied in response to Q13c.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
David M. Backenstoe, Esquire
148 Main Street
Hellertown, Pennsylvania 18055
(610) 838-2255

7. *In the Matter of the Tax Appeal of OfficeMax Incorporated, No. 2-7-12.* Copy of my opinion supplied in response to Q13c.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
None

8. *In the Matter of the Tax Appeal of Nobilis, Inc., No. 2-9-12.* Copy of my opinion supplied in response to Q13c.

Counsel for Bethlehem Township:
Lawrence B. Fox
1834 Pennsylvania Avenue
Allentown, Pennsylvania 18109
(610) 861-9297

Counsel for the Taxpayer:
None

e. Provide a list of all cases in which certiorari was requested or granted.

I am unaware of any cases in which a party requested certiorari.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

I am unaware of any opinions where my decisions were reversed or where my opinions were affirmed.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a tax hearing officer, all of my opinions are unreported decisions that are disseminated only to the parties involved in the case. Thus, there are no citations to my opinions.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I authored no opinions involving federal or state constitutional issues.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;

- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

As a tax hearing officer, I assessed the necessity or propriety of a recusal by thoroughly considering Canon 3(c) of the Pennsylvania Code of Judicial Conduct, which delineates the grounds by which a judge should disqualify himself or herself from a particular case. There have been no instances where I have recused myself from a case or where I have been requested to recuse myself from a case.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

From 1974 to 1976, I served as an elected member of the Northampton County Government Study Commission, after having been elected by Northampton County citizens.

From 1985 to 1991, I served as Solicitor for the Personnel Appeals Board of Northampton County, after having been appointed by former County Executive Eugene R. Hartzell.

From 1991 to 2004, I served as Solicitor for the Northampton County Industrial Development Authority, after having been appointed by former County Executive Eugene R. Hartzell.

From 1991 to 2010, I served as a member of the Board of Governors of the Lehigh-Northampton Airport Authority. I was initially appointed by former Northampton County Executive Gerald E. Seyfried, then reappointed by former County Executive A. Landis Brackbill, Jr., and finally reappointed by former County Executive Glenn F. Reibman.

From 1992 to 1997, I served as Solicitor for the City Council of the City of Bethlehem, after having been appointed by the City Council of the City of Bethlehem.

From 1993 to 1999, I served as member of the Board of Commissioners of the Pennsylvania Public Television Network, after having been appointed by former Governor Robert P. Casey.

From 1998 to 2003, I served as Solicitor for the City of Bethlehem, after having been appointed by former Mayor Donald T. Cunningham, Jr.

From 2004 to 2010, I served as a member of the City Council of the City of Bethlehem. I was initially appointed to a vacant seat by the then-members of City Council from 2004 to 2006. I was subsequently elected to serve a full term from 2006 to January 2010. I ran unsuccessfully for re-election in November 2009.

From 2004 to 2013, I served as Solicitor for the Northampton County General Purpose Authority, after having been appointed by former Northampton County Executive Glenn F. Reibman.

From 2011 to 2013, I served as Solicitor for the East Allen Township Municipal Authority, after having been appointed by the Board of Directors of East Allen Township Municipal Authority.

Since 2006, I have served as the Solicitor for East Allen Township, after having been appointed by the Board of Supervisors of East Allen Township.

Since 2011, I have served as the Alternate Solicitor for Zoning and Planning for the Borough of Bangor, after having been appointed by the Borough Council of the Borough of Bangor.

Since 2013, I have served as Solicitor for the City of Easton Board of Ethics, after having been appointed by the City of Easton Board of Ethics.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

After consulting my records and the internet, I have provided all of the information regarding my political activities that I can recall, though there may be some events that I have missed. My wife and I have hosted numerous fundraisers for local, state and federal candidates at our home, as well as co-hosted events at other locations. These fundraisers have been on behalf of the following campaigns and political committees:

From 2012 to 2013, I served as Co-Chair of the Bipartisan Committee to Retain Judge Emil Giordano. I was responsible for coordination of fundraising activity. From 2005 to 2006 and from 2011 to 2012, I served as a member of the Bob Casey for United States Senate Finance Committee. My wife and I held fundraisers for the campaign. From 1991 to 2010, I served as Treasurer of Citizens for John Morganelli for District Attorney, and I assisted with fundraising. As Treasurer, I co-signed Campaign Income and Expense Reports for the campaign. From 1992 to 1998, I served as Co-Chair of Citizens for Congressman Paul F. McHale. My wife and I held fundraisers for the campaign. In 1989, I

served as the Chair of the Committee to Elect Mayor Paul M. Marcincin. My wife and I held fundraisers for the campaign. In 1987, I served as the Chair of the Committee to Elect Mike Loupos Mayor. My wife and I held fundraisers for the campaign.

From 1984 to 1998, I served as an elected member of the Democratic State Committee of Pennsylvania. In this capacity, I hosted fundraisers for state and national offices presented in the Commonwealth of Pennsylvania. These included fundraisers for Governor Robert P. Casey for Governor of Pennsylvania (1986 and 1990), Robert P. Casey, Jr. for State Auditor General (1996 and 2000), Robert P. Casey, Jr. for State Treasurer (2004) and Robert P. Casey, Jr. for the United States Senate (2006 and 2012). I also participated in "Get Out the Vote Day" events throughout this period of time and attended local community fairs where I would introduce speakers.

From 1980 to 1998, I served as an elected member of the Northampton County Democratic Committee and served as Assistant Treasurer for this Committee from approximately 1985 to 1990. My wife and I have hosted numerous fundraisers for local candidates at our home, as well as co-hosting events at other locations. These fundraisers have been on behalf of the following candidates: Paul J. Calvo for Bethlehem City Council (1987), John J. Lawrence for Bethlehem City Council (1983 and 1987), James A. Delgrosso for City Council (1981, 1985, 1989 and 1993) and James A. Delgrosso for Mayor (2003). I recall the organization endorsed Paul J. Calvo for Bethlehem City Council, John J. Lawrence for Bethlehem City Council, James A. Delgrosso for Bethlehem City Council and James A. Delgrosso for Mayor. I also participated in local community fairs where I would introduce speakers.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I never served as a judicial clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

I never had a solo practice.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1980 – Present

Leeson, Leeson & Leeson

Permanent Office Address (a fire occurred at my office building on February 9, 2014 – our offices have been temporarily relocated during reconstruction):

Leeson, Leeson & Leeson

70 East Broad Street

P.O. Box 1426

Bethlehem, Pennsylvania 18016

Temporary Office Address Effective February 17, 2014 (until completion of reconstruction of permanent office):

Leeson, Leeson & Leeson

One East Broad Street, Suite 320

P.O. Box 1426

Bethlehem, Pennsylvania 18016

Partner

1985 – 1991

Personnel Appeals Board of Northampton County

669 Washington Street

Easton, Pennsylvania 18042

Solicitor

1992 – 1997

City Council of the City of Bethlehem

10 East Church Street

Bethlehem, Pennsylvania 18018

Solicitor

1991 – 2004

Northampton County Industrial Development Authority

669 Washington Street

Easton, Pennsylvania 18042

Solicitor

1998 – 2003

City of Bethlehem

10 East Church Street

Bethlehem, Pennsylvania 18018

Solicitor

2004 – 2013

Northampton County General Purpose Authority

669 Washington Street

Easton, Pennsylvania 18042
Solicitor

2011 – 2013
East Allen Township Municipal Authority
5340 Nor-Bath Boulevard
Northampton, Pennsylvania 18067
Solicitor

2006 – Present
East Allen Township
5344 Nor-Bath Boulevard
Northampton, Pennsylvania 18067
Solicitor

2011 – Present
Borough of Bangor
197 Pennsylvania Avenue
Bangor, Pennsylvania 18013
Alternate Solicitor for Planning and Zoning

2013 – Present
City of Easton Board of Ethics
One South Third Street
Easton, Pennsylvania 18042
Solicitor

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have served as a mediator and an arbitrator. The ten most significant matters that I have mediated or arbitrated are:

1. *Spohn v. Reading School District* (United States District Court appointed mediator, mediated settlement of civil rights case; the case pertained to alleged discrimination in employment)
2. *Bean, Inc. v. Pickarski, Inc.* (arbitrated construction industry case as sole arbitrator; the case pertained to a dispute between a subcontractor and a general contractor)
3. *GCR I, LLC, GCR II, LLC, Colson GCR, LLC and CDC Development Co., Inc. v. Tavianini* (arbitrated commercial real estate agreement of sale case as member of a three-member arbitration panel; the case pertained to a dispute concerning the

enforceability of an Agreement of Sale pertaining to a commercial parcel of real estate)

4. *Mayhon, Inc. v. Stanley Vidmar, Inc.* (arbitrated construction industry case as member of a three-member arbitration panel; the case pertained to a dispute between a project owner and a general contractor)
5. *Shmookler v. Deerbook Insurance Company* (arbitrated underinsured motorist claim as sole arbitrator; the case pertained to a claim for money damages for personal injuries where liability was agreed to by the parties)
6. *Andershonis, trading as Andershonis Contracting Co. v. County of Schuylkill Prison* (arbitrated construction industry dispute as member of a three-member arbitration panel; the case pertained to a dispute between a project owner and a general contractor)
7. *Seiger v. Erie Insurance Group* (arbitrated underinsured motorist claim as sole arbitrator; the case pertained to a claim for money damages for personal injuries where liability was agreed to by the parties)
8. *Haddad v. Martinez* (arbitrated automobile accident case as sole arbitrator; the case pertained to a claim for money damages for personal injuries where liability was agreed to by the parties)
9. *Conigliaro v. Travelers Insurance Company* (arbitrated underinsured motorist claim as sole arbitrator; the case pertained to a claim for money damages for personal injuries where liability was agreed to by the parties)
10. *Carano v. Wickersham Construction and Engineering, Inc.* (arbitrated construction industry case as sole arbitrator; this case pertained to a dispute between a project owner and a general contractor)

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1980 to approximately 1995, my law practice was primarily focused on insurance defense work. I handled many different types of civil litigation focusing on the defense of automobile, premises liability, products liability and professional liability claims. Since approximately

1995, my law practice has been a diverse civil practice, which includes insurance defense work, plaintiff civil litigation, municipal law, construction industry law and general civil practice matters such as wills and estates and real estate transactions.

Since 1991, my law practice has also involved service as Solicitor for multiple local government agencies. In my role as Solicitor, I have provided general legal advice to these municipal entities, including attending meetings of the governing boards of each entity, providing of legal recommendations, and preparing legal filings, contracts, ordinances and other legal documents associated with the particular entity's operations. I also have attended hearings and handled litigation matters for each municipal entity.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1980 to approximately 1995, my practice was primarily focused on civil litigation, representing insurance companies and their insureds, as well as self-insured companies. Since approximately 1995, in addition to civil defense work, I also have represented local government agencies, private individuals, small businesses, industrial and commercial construction contracting firms, religious institutions and non-profit institutions.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

From 1980 to approximately 1995, nearly my entire practice was in litigation and I appeared in court frequently. From 1995 to the present, approximately fifty percent of my practice has been in litigation, and fifty percent of my practice has been in general counseling and transactional work for municipalities, small businesses, industrial and commercial construction contracting firms, religious institutions and non-profits. I have continued to appear in Court frequently since 1995.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 5%
 - 2. state courts of record: 94%
 - 3. other courts: 0%
 - 4. administrative agencies: 1%
- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 99%
 - 2. criminal proceedings: 1%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate I have tried 110 to 125 cases to verdict, judgment or final decision. I am unable to state an exact number because many of my records were destroyed in a fire that occurred at my office building on February 9, 2014. I was lead counsel or co-lead counsel in all of the cases.

- i. What percentage of these trials were:
- | | |
|--------------|-----|
| 1. jury: | 95% |
| 2. non-jury: | 5% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *DeBonis v. J.R. Faust & Sons Construction, LLC, et al.*, Case No. C-48-CV-2006-7329 (Northampton County, Pa. Ct. Com. Pl. 2010) (Hon. Emil A. Giordano), *aff'd* 3112 EDA 2011 (Pa. Super. Ct. 2011)

I represented the uninsured plaintiffs, whose home was severely undermined and damaged by sinkholes. At the time that the sinkholes opened up, there was a broken storm sewer pipe spilling storm water into one of the sinkholes. Litigation was brought on the theory that the storm sewer pipe was constructed improperly by the defendants, that it leaked and that the storm water leakage from the pipe

was the cause of and triggered the sinkhole activity. There was no direct eyewitness evidence to prove plaintiffs' theories, and the jury trial became a battle of expert witnesses and competing scientific and engineering theories. The jury entered a verdict for the plaintiffs, a decision that was affirmed on appeal by the Superior Court. The case was settled following the filing of a Petition for Allowance of Appeal by the defendants to the Supreme Court of Pennsylvania, but before the Supreme Court decided the Petition. I represented the plaintiffs before the trial and appellate courts.

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726 Walnut Street
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(610) 258-2901

2. *Wilson Area School District v. Skepton, et al.*, Case No. C-48-CV-2001-1166 (Northampton County, Pa. Ct. Com. Pl. 2004) (Hon. Michael V. Franciosa), *aff'd* 860 A.2d 625 (Pa. Commw. Ct. 2004)

After the favorable decision secured for my clients in the case cited, the Wilson Area School District, the owner of the construction project in question, then filed suit against the contractors arguing that the refund of the building permit fees constituted unjust enrichment. The court entered a summary judgment and found in favor of all of the contractors against this claim by the School District. The summary judgment was affirmed on appeal. This decision upheld the principle of competitive public bidding for public projects and that when contractors provide labor and materials for a fixed price, any profit or cost savings achieved by the

contractors in the process, belong to the contractor and not to the public agency. I represented the contractors before the trial and appellate courts.

Co-Counsel: Robert A. Alpert
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33 South Seventh Street
Allentown, Pennsylvania 18105
(610) 820-5450

Opposing Counsel: Michael A. Gaul
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One West Broad Street
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Dennis A. DeEsch
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(610) 438-2020

3. *Skepton, et al. v. Borough of Wilson*, Case No. 1992-C-10688 (Northampton County, Pa. Ct. Com. Pl. 1995), *aff'd* 728 A.2d 1055 (Pa. Commw. Ct. 1999); *aff'd* 562 Pa. 344, 755 A.2d 1267 (Pa. 2000)

I represented two of the plaintiff contractors, who participated in the construction of a new high school in the Borough of Wilson. The Borough charged inflated building inspection permit fees to the contractors, which were substantially disproportionate to the actual cost of building code inspections. We argued that the inflated fees charged by the Borough constituted an unlawful disguised tax. The court granted plaintiffs' motion for summary judgment and ordered full refunds of the permit fees plus interest. The decision of the Supreme Court of Pennsylvania, which affirmed, had the effect of prohibiting disguised taxes by municipalities in Pennsylvania to raise revenue by charging excessive permit fees. I represented the contractors before the trial and appellate courts.

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Opposing Counsel: Dennis A. DeEsch
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Easton, Pennsylvania 18040
(610) 438-2020

4. *Gaston v. Diocese of Allentown, et al.*, Case No. 94-C-396 (Lehigh County, Pa. Ct. Com. Pl. 1997) (Hon. James Knoll Gardner), *aff'd* 712 A.2d 757 (Pa. Super. Ct. 1998)

I represented the defendants, which owned and operated a Catholic parochial elementary school. The plaintiffs' children were expelled from the school due to violations of the school's disciplinary code. The plaintiffs brought suit seeking money damages for negligent and intentional infliction of emotional distress due to improper expulsion. The trial court granted summary judgment in favor of the defendants. I represented the defendants on the appeal. The case established the principle that private religiously affiliated schools may enact, and enforce disciplinary codes of conduct for students in such schools, and that the courts will not second guess church administrators and church doctrine pertaining to the governance of religiously affiliated private schools. I represented the defendants before the trial and appellate courts.

Opposing Counsel: Joseph T. Heber (deceased)

5. *Little Helpers of Good St. Anne v. Negrão, et al.*, Case No. 1992-10429 (Northampton County, Pa. Ct. Com. Pl. 1996) (Hon. Richard D. Grifo, Deceased), *aff'd* 454 Pa. Super. 693, 685 A.2d 219 (Pa. Super. Ct. 1996)

I represented the plaintiff, a small non-profit organization consisting of elderly citizens who owned and operated a small religious shrine located on a landlocked parcel of real estate. The shrine had a poorly defined easement access route across a neighboring property, which was the sole means of access. The defendants purchased the adjoining tract of land and received municipal approval for construction of a commercial development, that would have rerouted the plaintiff's access and create a gated and circuitous access route. The plaintiff, which was reliant upon monetary donations from visitors for its survival, was concerned that access by the public would be so inconvenient as to discourage most visitors, thereby leading to the eventual closure of the shrine. Following a bench trial, the court ordered the elimination of the gated access, and provided for a more direct access route for the convenience of visitors. The case was appealed, and I then briefed and argued the case in the Superior Court of Pennsylvania, which upheld the equitable decree entered in favor of the plaintiff, which resolved the case, in an unpublished opinion.

Opposing Counsel: David A. Eisenberg
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(610) 437-1410

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(610) 997-5060

6. *Mellow, et al. v. Mitchell, et al.*, 530 Pa. 44, 607 A.2d 204 (1992) (Supreme Court of Pennsylvania bench trial conducted before a Special Master appointed by the Supreme Court, then President Judge David W. Craig (deceased) of the Commonwealth Court of Pennsylvania)

This was the 1992 Pennsylvania congressional reapportionment litigation case. Following the 1990 census, Pennsylvania was entitled to have only 21 seats in the United States House of Representatives, a net loss of two seats. After the Pennsylvania legislature failed to enact a reapportionment plan, litigation ensued. I was retained by three state representatives to advocate adoption of a reapportionment plan that would retain the 15th Congressional District substantially intact. The Pennsylvania Supreme Court assumed jurisdiction and appointed a special master to conduct a non-jury trial and make a recommendation for judicial adoption of one of the six reapportionment plans that had been under consideration by the state legislature. The special master recommended a plan of reapportionment that retained the 15th Congressional District substantially intact. The Supreme Court resolved the case by adopting the reapportionment plan recommended by the special master.

Opposing Counsel: Edwin A. Abrahamsen
Edwin A. Abrahamsen, P.C.
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Reizdan B. Moore
113 Main Capitol Building
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333 Market Street, 17th Floor
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John H. Broujos
(no current business contact information available)

Edward C. Hussie
(no current business contact information available)

David J. Brightbill
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17 North Second Street, 16th Floor
Harrisburg, Pennsylvania 17101
(717) 234-1090

A. Michael Pratt
Pepper Hamilton
3000 Two Logan Square
18th and Arch Streets
Philadelphia, Pennsylvania 19103
(215) 981-4386

7. *Underwriters at Lloyds London, et al. v. Commonwealth of Pennsylvania*, Case No. 80-C-2571 (Lehigh County, Pa. Ct. Com. Pl. 1991) (Hon. James Knoll Gardner), *aff'd* 603 A.2d 241 (Pa. Commw. Ct. 1992)

I represented the plaintiff insurance carriers in this unusual case brought in the form of an action for contribution, due to substantial money damages paid by them in connection with multiple fatalities caused in a motor vehicle accident on a negligently maintained PennDot highway. The underlying third party liability tort cases had been brought in federal court prior to this case, and efforts to join the Pennsylvania Department of Transportation as a third party defendant in federal court was precluded by the Eleventh Amendment. The insurance companies, acting as real parties in interest, then brought this action for contribution. The Commonwealth Court affirmed a trial court decision that the Department of Transportation was not immune from suits for actions for contribution, even where the actions are not brought by the original tortfeasors and are brought

instead by the insurance carriers that paid the settlements in question. The case was thereafter settled.

Opposing Counsel: William A. Slotter
(no current business contact information available)

8. *Northampton County Area Community College, et al. v. Atas Aluminum Corporation, et al.*, Case No. 1987-C-9165 (Northampton County, Pa. Ct. Com. Pl. 1990) (Hon. Richard D. Grifo, deceased)

This was a multi-million dollar alleged breach of contract claim pertaining to construction of additions and modifications to the main buildings of the plaintiff college. I defended the general contractor on the project. By stipulation of counsel, this civil litigation case was tried in front of a three-member arbitration panel. During the five-day arbitration, some evidence was presented as to the existence of contractual non-compliance with the plans and specifications. Multiple fact witnesses and multiple expert witnesses testified. The panel found in favor of the defendant.

Opposing Counsel: Richard B. Ashenfelter, Jr.
49 Chesterfield Lane
Malvern, Pennsylvania 19355
(610) 935-2928

Malcolm J. Gross
Gross, McGinley, LaBarre and Eaton
33 South Seventh Street
P.O. Box 4060
Allentown, Pennsylvania 18105
(610) 820-5450

Kevin J. Kelleher
901 West Lehigh Street, Suite 200
Bethlehem, Pennsylvania 18018
(610) 882-2111

Nicholas Noel, III
2505 Newburg Road
Easton, Pennsylvania 18045
(610) 258-0866

9. *Hartshorne v. South Whitehall Township Authority, et al.*, Case No. 81-C-4554 (Lehigh County, Pa. Ct. Com. Pl. 1986) (Hon. James Knoll Gardner)

This case involved a fatal claim pertaining to a motor vehicle accident occurring on a state highway construction project. My client, the construction contractor,

had not properly signed and posted the project with the advance warning signs required by Pennsylvania Department of Transportation rules and regulations. During the middle of the jury trial, at least one of the jurors learned of the fact that my client had made a substantial offer of settlement to the plaintiff. The court granted the motion to dismiss the juror from the case but denied the motion for a mistrial. A verdict was entered in favor of the defendant, which resolved the case.

Opposing Counsel: Mark H. Scoblionko
 Scoblionko, Scoblionko, Muir & Bartholomew
 40 South Fifth Street
 P.O. Box 1998
 Allentown, Pennsylvania 18105
 (610) 434-7138

Edward H. McGee (deceased)

George A. Welsh
 (no current business contact information available)

10. *Gremar, Inc. v. Rohm & Haas Company, et al.*, Case No. 1981-C-10464
 (Northampton County, Pa. Ct. Com. Pl. 1985) (Hon. Franklin S. VanAntwerpen)

This case involved a four-week jury trial involving a dispute concerning a chemical formula manufactured by Rohm & Haas Company, for use in mortar in the manufacture of pre-fabricated masonry wall panels. I defended the exclusive distributor of the product. It was alleged that my client, Masonry Systems International, Inc. failed to disclose research information that it jointly developed with Rohm & Haas, that arguably should have been disclosed. Before jury deliberations were to occur, I convinced opposing counsel and the Court that my client had done nothing wrong, and my client was dismissed from the case by stipulation without having to face jury deliberations. An adverse verdict would have potentially put my client out of business. There was no settlement or payment made by my client to secure the stipulation.

Opposing Counsel: Gus Milides (deceased)

Albert J. Bartosic (deceased)

John D. DiGiacomo (deceased)

Karl H. Kline
 Karl Kline, P.C.
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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As part of the work I have done as the Solicitor for municipalities, I have provided advice on a broad array of issues. For example, I played a central role in the City of Bethlehem's 1,500 Acre Brownfield Redevelopment Project. In 1998, the newly-elected mayor of Bethlehem asked me to serve as City Solicitor. One of the first issues was the cessation of all steel making activities and the elimination of thousands of jobs at the former Bethlehem Steel Corporation plant, a 1,500 acre privately owned brownfield site located within the city limits. I was asked by the mayor to chair and coordinate all efforts to work on a redevelopment plan for the entire 1,500 acre site. I accepted the responsibility, even though it exceeded my job responsibilities as City Solicitor. I established a public/private partnership with the then-Bethlehem Steel Corporation and we successfully charted a course to plan and implement rezoning, private investment and public investment in infrastructure funded with state and federal financing, to redevelop the largest privately owned brownfield site in the United States. I drafted a comprehensive zoning ordinance to create a new form of industrial zoning, negotiated and drafted multiple development agreements with the then-Bethlehem Steel Corporation, negotiated and drafted multiple agreements with state and federal agencies for infrastructure funding, and drafted all of the agreements and ordinances necessary to create a tax increment financing district. The effort survived the bankruptcy of the Bethlehem Steel Corporation, and since that time, the redevelopment effort has resulted in thousands of new jobs, two billion dollars in new private sector investment and additional private investment on the horizon.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

In connection with my prior service with the City of Bethlehem, I was enrolled

in the Pennsylvania Municipal Retirement System, which will be available to me when I reach retirement eligibility.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If I am confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If I am confirmed, I will recuse myself from any litigation where I played a role. My brother is a partner in Leeson, Leeson & Leeson. If confirmed, I would recuse myself from any cases in which Leeson, Leeson & Leeson is a party or is representing a party. I will evaluate and determine appropriate action for any potential or apparent conflict of interest on a case-by-case basis.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will carefully review and address any real or potential conflicts of interest by reference to 28 U.S.C. §455, Canon 3 of the Code of Conduct for United States Judges, and to all other laws, rules and practices governing such circumstances.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of

professional prominence or professional workload, to find some time to participate in serving the disadvantaged.” Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have been involved in pro bono work since becoming an attorney in 1980. Currently, I am handling cases involving pro bono representation of homeowners who are unemployed or otherwise lack the resources to meet their current mortgage obligations, under the Court of Common Pleas of Northampton County Mortgage Foreclosure Diversion Program. I spend a minimum of one to two days a month on such matters. Such clients also need help with civil actions they are facing from credit card companies which I also defend. I try to assist in restructuring the repayment obligations for the clients.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In July 2011, I submitted an application to the Judicial Advisory Committee established by Senators Robert P. Casey, Jr. and Patrick J. Toomey. On November 21, 2011, I interviewed with the Committee in Philadelphia, Pennsylvania. On January 7, 2014, I was interviewed by Senator Casey and his staff in Washington, D.C. Since February 7, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 10, 2014, I was interviewed by Senator Toomey and a representative of his staff in Philadelphia, Pennsylvania. On March 31, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 16, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Leeson, Jr., Joseph F.	2. Court or Organization U.S. District Court, Eastern District of Pennsylvania	3. Date of Report 06/16/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 06/16/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 06/13/2014
7. Chambers or Office Address One East Broad Street Suite 320 Bethlehem, Pennsylvania 18016-1426		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Partner	Leeson, Leeson & Leeson, Attorneys At Law
2. President and Director	Damar Construction, Inc.
3. Solicitor	East Allen Township
4. Title Insurance Agent	Conestoga Title Insurance Company
5. Tax Hearing Officer	Bethlehem Township
6. Alternate Solicitor for Planning and Zoning	Borough of Bangor
7. President and Chair of Board of Trustees	Janet Johnston Housenick and William D. Housenick Memorial Foundation
8. Solicitor	City of Easton Board of Ethics
9. Solicitor	East Allen Township Municipal Authority
10. Solicitor	Northampton County General Purpose Authority
11. Director	DeSales University President's Council
12. Director	Lehigh Valley Public Telecommunications Corporation
13. Director	Administrative Board of Pennsylvania Catholic Conference

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II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*☐ NONE *(No reportable agreements.)*DATEPARTIES AND TERMS

1. 04/15/2010 Pennsylvania Municipal Retirement System - not receiving any benefits, but will be eligible for retirement benefit
2. _____
3. _____

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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2012	Leeson, Leeson & Leeson - compensation for legal services	\$440,069.00
2. 2012	Janet Johnston Housenick and William D. Housenick Memorial Foundation - compensation for service as a Trustee	\$4,500.00
3. 2013	Leeson, Leeson & Leeson - compensation for legal services	\$339,756.00
4. 2013	Janet Johnston Housenick and William D. Housenick Memorial Foundation - compensation for service as a Trustee	\$4,500.00
5. 2014	Leeson, Leeson & Leeson - compensation for legal services	\$110,000.00

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2013	Leeson, Leeson & Leeson - salary for clerical services
2. 2014	Leeson, Leeson & Leeson - salary for clerical services
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)
☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

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V. GIFTS. *(Includes those to spouse and dependent children; see pp. 24-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. Exempt			
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

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VII. INVESTMENTS and TRUSTS — income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "XY" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. ADT Corporation Common Stock	A	Dividend	J	T	Exempt				
2. Aetna, Inc. Common Stock	A	Dividend	L	T	Exempt				
3. Alcatel Lucent Common Stock	A	Dividend	J	T	Exempt				
4. Alcoa, Inc. Common Stock	A	Dividend	J	T	Exempt				
5. American Bank, Inc. (PA) Common Stock	A	Dividend	K	T	Exempt				
6. American Express Company Common Stock	A	Dividend	M	T	Exempt				
7. Ameriprise Financial, Inc. Common Stock	A	Dividend	J	T	Exempt				
8. AOL, Inc. Common Stock	A	Dividend	J	T	Exempt				
9. Ascent Capital Group, Inc. Common Stock	A	Dividend	J	T	Exempt				
10. AT&T, Inc. Common Stock	B	Dividend	K	T	Exempt				
11. Avis Budget Group, Inc. Common Stock	A	Dividend	J	T	Exempt				
12. Banco Santander, S.A. Common Stock	A	Dividend	J	T	Exempt				
13. Bank America Corporation Common Stock	A	Dividend	M	T	Exempt				
14. Blackhawk Network Holdings, Inc.	A	Dividend	J	T	Exempt				
15. Boeing Company Common Stock	A	Dividend	K	T	Exempt				
16. CBS Corporation Common Stock	A	Dividend	J	T	Exempt				
17. Cisco Systems, Inc. Common Stock	A	Dividend	J	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$1,000,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 J12 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

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VII. INVESTMENTS and TRUSTS — income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code I (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Citigroup, Inc. Common Stock	A	Dividend	K	T	Exempt				
19. Columbia Global Opportunities Fund A Mutual Fund	A	Dividend	J	T	Exempt				
20. Columbia Tax Exempt Fund A - Mutual Fund	A	Dividend	K	T	Exempt				
21. Comcast Corporation Common Stock	A	Dividend	K	T	Exempt				
22. Covidien PLC Common Stock	A	Dividend	J	T	Exempt				
23. CSX Corporation Common Stock	A	Dividend	K	T	Exempt				
24. DirecTV Common Stock	A	Dividend	K	T	Exempt				
25. Discover Financial Services Co. Common Stock	A	Dividend	J	T	Exempt				
26. Discovery Communications, Inc. Series A Common Stock	A	Dividend	J	T	Exempt				
27. Discovery Communications, Inc. Series C Common Stock	A	Dividend	J	T	Exempt				
28. Dow Chemical Company Common Stock	A	Dividend	K	T	Exempt				
29. Electronics for Imaging, Inc. Common Stock	A	Dividend	J	T	Exempt				
30. Express Scripts Holding Company Common Stock	A	Dividend	J	T	Exempt				
31. Fifth Third Bancorp Common Stock	B	Dividend	L	T	Exempt				
32. Frontier Communications Corp. Common Stock	A	Dividend	J	T	Exempt				
33. Fulton Financial Corp. PA Common Stock	A	Dividend	K	T	Exempt				
34. General Electric Company Common Stock	B	Dividend	L	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$350,001 - \$100,000 J = \$15,000 or less (See Columns C1 and D3)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$30,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P = \$1,000,001 - \$5,000,000 N = More than \$50,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$30,000
2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					(5) Identity of buyer/seller (if private transaction)
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)		
35. Glaxo Smith Kline, PLC Common Stock	A	Dividend	J	T	Exempt					
36. Hartford Financial Services Group, Inc. Common Stock	A	Dividend	K	T	Exempt					
37. Hewlett Packard Company Common Stock	A	Dividend	K	T	Exempt					
38. International Business Machines Corp. Common Stock	A	Dividend	K	T	Exempt					
39. J.P. Morgan & Chase Co. Common Stock	A	Dividend	J	T	Exempt					
40. Janus Capital Group, Inc. Common Stock	A	Dividend	J	T	Exempt					
41. Jetblue Airways Corporation Common Stock	A	Dividend	J	T	Exempt					
42. Kansas City Southern Common Stock	A	Dividend	J	T	Exempt					
43. Keycorp Common Stock	A	Dividend	K	T	Exempt					
44. Lehigh Gas Partners Ltd. Partnership	C	Int./Div.	L	T	Exempt					
45. Liberty Interactive Corp. Series A Common Stock	A	Dividend	J	T	Exempt					
46. Liberty Interactive Corp. Ventures Series A Common Stock	A	Dividend	J	T	Exempt					
47. Liberty Media Corp. Common Stock	A	Dividend	K	T	Exempt					
48. Lincoln National Corporation Common Stock	A	Dividend	J	T	Exempt					
49. Mallinckrodt Public Ltd. Company Common Stock	A	Dividend	J	T	Exempt					
50. Merck & Co., Inc. Common Stock	A	Dividend	K	T	Exempt					
51. Monsanto Company Common Stock	A	Dividend	K	T	Exempt					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$20,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 Q = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(XY)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
52. Morgan Stanley Common Stock	A	Dividend	J	T	Exempt				
53. Motorola Solutions, Inc. Common Stock	A	Dividend	J	T	Exempt				
54. National Penn Bancshares, Inc. Common Stock	B	Dividend	L	T	Exempt				
55. Oracle Corp. Common Stock	A	Dividend	J	T	Exempt				
56. Pentair Ltd. Common Stock	A	Dividend	J	T	Exempt				
57. Pfizer, Inc. Common Stock	B	Dividend	L	T	Exempt				
58. PHH Corporation Common Stock	A	Dividend	J	T	Exempt				
59. PNC Financial Services Group, Inc. Common Stock	A	Dividend	J	T	Exempt				
60. Regions Financial Corp. Common Stock	A	Dividend	M	T	Exempt				
61. Rowan Companies, Inc. Common Stock	A	Dividend	J	T	Exempt				
62. Safeway, Inc. Common Stock	A	Dividend	J	T	Exempt				
63. Southwest Airlines Company Common Stock	A	Dividend	L	T	Exempt				
64. Starz Series A Common Stock	A	Dividend	J	T	Exempt				
65. TE Connectivity Ltd. Common Stock	A	Dividend	J	T	Exempt				
66. Time, Inc.	A	Dividend	J	T	Exempt				
67. Time Warner Cable, Inc. Common Stock	A	Dividend	J	T	Exempt				
68. Time Warner, Inc. Common Stock	A	Dividend	J	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
 2. Value Codes: (See Columns C1 and D3)
 3. Value Method Codes: (See Column C2)

A = \$1,000 or less
 F = \$50,001 - \$100,000
 J = \$15,000 or less
 N = \$250,001 - \$500,000
 P1 = \$25,000,001 - \$50,000,000
 Q = Appraisal
 U = Book Value

B = \$1,001 - \$2,500
 G = \$100,001 - \$1,000,000
 K = \$15,001 - \$50,000
 O = \$500,001 - \$1,000,000
 R = Cost (Real Estate Only)
 V = Other

C = \$2,501 - \$5,000
 H1 = \$1,000,001 - \$5,000,000
 L = \$50,001 - \$100,000
 P1 = \$1,000,001 - \$5,000,000
 P4 = More than \$50,000,000
 S = Assessment
 W = Estimated

D = \$5,001 - \$15,000
 I2 = More than \$5,000,000
 M = \$100,001 - \$250,000
 P2 = \$5,000,001 - \$25,000,000
 T = Cash Market

E = \$15,001 - \$50,000

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VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
69. Travelers Companies, Inc. Common Stock	A	Dividend	J	T	Exempt				
70. Tyco International, Ltd. Common Stock	A	Dividend	J	T	Exempt				
71. Vanguard Prime Money Market Mutual Fund	A	Dividend	J	T	Exempt				
72. Verizon Communications, Inc. Common Stock	A	Dividend	J	T	Exempt				
73. Viacom, Inc. Common Stock	A	Dividend	K	T	Exempt				
74. Waste Management, Inc. Common Stock	A	Dividend	K	T	Exempt				
75. Wells Fargo & Co. Common Stock	B	Dividend	L	T	Exempt				
76. Wyndham Worldwide Corp. Common Stock	A	Dividend	K	T	Exempt				
77. Xerox Corporation Common Stock	A	Dividend	J	T	Exempt				
78. Damar Construction, Inc.	F	Dividend	M	U	Exempt				
79. Leeson, Leeson & Leeson		None	K	U	Exempt				
80. Rental Property #1, Bethlehem, Pennsylvania	E	Rent	M	W	Exempt				
81. Aviva Life Insurance: Universal Life	C	Interest	M	T	Exempt				
82. National Penn Bank Accounts	A	Interest	N	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I12 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

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IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/* Joseph F. Leeson, Jr.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		285	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	804	132	Notes payable to relatives			
Unlisted securities – see schedule		225	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – see schedule		825	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		20	000				
Cash value-life insurance		166	844				
Other assets itemize:							
PA Municipal Retirement System		54	669				
				Total liabilities			0
				Net Worth	3	380	645
Total Assets	3	380	645	Total liabilities and net worth	3	380	645
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**Listed Securities

ADT Corporation	\$ 1,734
Aetna, Inc.	66,670
Alcatel Lucent	222
Alcoa, Inc.	15,191
American Bank, Inc. (PA)	21,735
American Express Company	121,403
Ameriprise Financial, Inc.	12,310
AOL, Inc.	186
Ascent Capital Group, Inc.	6,350
AT&T, Inc.	25,510
Avis Budget Group, Inc.	14,289
Banco Santander, S.A.	4,050
Bank America Corporation	194,634
Blackhawk Network Holdings, Inc.	471
Boeing Company	17,272
CBS Corporation	12,486
Cisco Systems, Inc.	6,574
Citigroup, Inc.	19,457
Columbia Global Opportunities Fund	2,840
Columbia Tax-Exempt Fund	25,720
Comcast Corporation	33,831
Covidien PLC	7,504
CSX Corporation	38,363
DirecTV	33,220
Discover Financial Services Co.	3,276
Discovery Communications, Inc. Series A	3,916
Discovery Communications, Inc. Series C	3,857
Dow Chemical Company	29,975
Electronics for Imaging, Inc.	4,057
Express Scripts Holding Company	3,402
Fifth Third Bancorp	68,515
Frontier Communications Corp.	588
Fulton Financial Corp. PA	27,615
General Electric Company	58,012
Glaxo Smith Kline, PLC	9,040
Hartford Financial Services Group, Inc.	20,379
Hewlett Packard Company	20,669
International Business Machines Corp.	29,584
J.P. Morgan & Chase Co.	12,248
Janus Capital Group, Inc.	2,545
Jetblue Airways Corporation	4,520
Kansas City Southern	10,621
Keycorp	30,422
Lehigh Gas Partners Ltd. Partnership	53,547

Liberty Interactive Corp. Series A	5,801
Liberty Interactive Corp. Ventures Series A	1,379
Liberty Media Corp.	17,613
Lincoln National Corporation	10,353
Mallinckrodt Public Ltd. Company	890
Merck & Co., Inc.	22,662
Monsanto Company	29,414
Morgan Stanley	3,597
Motorola Solutions, Inc.	4,868
National Penn Bancshares, Inc.	58,287
Oracle Corp.	10,729
Pentair Ltd.	1,853
Pfizer, Inc.	68,064
PHH Corporation	8,752
PNC Financial Services Group, Inc.	19,850
Regions Financial Corp.	112,970
Rowan Companies, Inc.	3,216
Safeway, Inc.	3,985
Southwest Airlines Company	110,227
Starz Series A	3,897
TE Connectivity Ltd.	6,445
Time, Inc.	178
Time Warner Cable, Inc.	2,409
Time Warner, Inc.	4,734
Travelers Companies, Inc.	13,289
Tyco International, Ltd.	4,638
Vanguard Prime Money Market Mutual Fund	27,765
Verizon Communications, Inc.	8,818
Viacom, Inc.	17,776
Waste Management, Inc.	30,921
Wells Fargo & Co.	73,089
Wyndham Worldwide Corp.	30,161
Xerox Corporation	6,692
Total Listed Securities	<u>\$ 1,804,132</u>

Unlisted Securities

Carisal Investment Holdings (BVI) Ltd.	0
Damar Construction, Inc.	175,000
Leeson, Leeson & Leeson	50,000
Total Unlisted Securities	<u>\$ 225,000</u>


Real Estate Owned

Personal residence	\$ 650,000
Rental property	175,000
Total Real Estate Owned	<u>\$ 825,000</u>

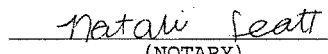
AFFIDAVIT

I, JOSEPH F. LEESON, JR., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

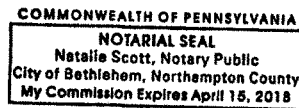
June 16, 2014
(DATE)



JOSEPH F. LEESON, JR.



(NOTARY)



UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).
Gerald John Pappert
2. **Position:** State the position for which you have been nominated.
United States District Court for the Eastern District of Pennsylvania
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.
Cozen O'Connor
1900 Market Street
Philadelphia, Pennsylvania 19103
4. **Birthplace:** State date and place of birth.
1963; Albany, New York
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
1985 – 1988, University of Notre Dame Law School; J.D., 1988
1981 – 1985, Villanova University; B.A. (*cum laude*), 1985
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.
2012 – Present, Summer 1987
Cozen O'Connor
1900 Market Street
Philadelphia, Pennsylvania 19103
Partner (2012 – Present)
Summer Associate (Summer 1987)

2012 – Present
Pennsylvania Banking and Securities Commission
Market Square Plaza
17 North Second Street, Suite 1300
Harrisburg, Pennsylvania 17101
Chairman

2006 – 2012
Commonwealth Financing Authority
Department of Community and Economic Development
400 North Street, Fourth Floor
Harrisburg, Pennsylvania 17120
Legislative Appointee

2008 – 2012
Cephalon, Inc.
41 Moores Road
Frazer, Pennsylvania 19355
Executive Vice President, General Counsel and Secretary

2005 – 2008
Ballard Spahr, LLP
1735 Market Street
51st Floor
Philadelphia, Pennsylvania 19103
Partner

1997 – 2005
Office of the Attorney General
Strawberry Square, 16th Floor
Harrisburg, Pennsylvania 17120
Attorney General of Pennsylvania (2003 – 2005)
First Deputy Attorney General of Pennsylvania (1997 – 2003)

1988 – 1997
Duane Morris, LLP
30 South 17th Street
Philadelphia, Pennsylvania 19103
Associate

April – November 1996
Mike Fisher for Attorney General
Harrisburg, Pennsylvania
Campaign Manager

April – November 1994
Santorum for Senate
Philadelphia, Pennsylvania
Volunteer Staff Member

Summer 1986, Summer 1985
State Senator Jay Rolison
New York State Capitol
Washington Avenue and State Street
Albany, New York 12206
Legislative Assistant (Summer 1986)
Intern (Summer 1985)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I registered for selective service at age 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

National Philanthropy Day Award for The George Fund for pediatric hospice (2009)

Recognition and honors from various groups and organizations during my service as Pennsylvania Attorney General (2003 – 2005)

University of Notre Dame Law School National Moot Court Team (1988)

Villanova University, Dean's List (1981 – 1985)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Pennsylvania Bar Association

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania, 1988
New York State, 1995

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of Pennsylvania, 1988
 United States District Court for the Eastern District of Pennsylvania, 1989
 United States Supreme Court, 2001

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Association of Corporate Counsel of America (2008 – 2011)

National Constitution Center Corporate Council (2008, 2009)

National Constitution Center Liberty Medal Gala Dinner Committee (2010)

National Association of Attorneys General (“NAAG”) (1997 – 2005)

NAAG Pharmaceutical Pricing Committee (2004)

NAAG Prescription Drug Abuse Committee (2004)

NAAG Strategic Planning Committee (2004)

NAAG Health Care Fraud, Abuse and Advocacy Committee (2004)

NAAG Consumer Protection Committee (2004)

NAAG Corporate Responsibility Securities Working Group (2004)

Order of St. Thomas More, Dean’s Circle, Notre Dame Law School (2011 – Present)

Society of Attorneys General Emeritus (2005 – Present)

The Federalist Society (1997 – 1998)

The George Fund for Pediatric Hospice Care (2008 – Present)
 Founder

Whitemarsh Valley Country Club (1994 – Present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed in response to 11(a) above currently discriminate or, to my knowledge, formerly discriminated on the basis of race, sex, religion or national origin. At no time during my membership have any of these organizations discriminated on any of these bases.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply two (2) copies of all published material to the Committee.

Fighting Back Against Skyrocketing Drug Prices, PR Newswire, March 19, 2004. Copy supplied.

- b. Supply two (2) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

2004 NAAG Strategic Planning Report. Copy supplied.

2002 Pennsylvania Interbranch Commission on Venue Report. Copy supplied.

- c. Supply two (2) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have chaired the quarterly public meeting of the Pennsylvania Banking and Securities Commission on May 7, 2014, February 12, 2014, November 13, 2013, August 7, 2013, May 8, 2013, February 13, 2013, and November 15, 2012. Meeting Minutes supplied where available.

On May 7, 2014, the Pennsylvania Banking and Securities Commission, which I chair, issued its Final Order in an enforcement action by the Pennsylvania

Department of Banking and Securities against H.L.I., Inc., Mark A. Fitchett and Elizabeth Hartsig. Copy supplied.

On May 8, 2013, the Pennsylvania Banking and Securities Commission, which I chair, issued its Opinion and Final Order in an enforcement action by the Pennsylvania Department of Banking and Securities against TAC Financial, Inc., Roy H. Eder, David John Nava d/b/a Surf Financial Group, LLC, William Sayers, Robert J. McNulty and Rhett J. McNulty. Copy supplied.

On April 21, 2013, I joined with 75 other current or former state attorneys general of both political parties in a letter to Senators Leahy and Grassley supporting immigration reform. Copy supplied.

On February 13, 2013, the Pennsylvania Banking and Securities Commission, which I chair, issued a Consent Agreement and Order concluding an investigation by the Pennsylvania Department of Banking and Securities into the business practices of Curing Capital, Inc. and Michael Dion. Copy supplied.

On February 13, 2013, the Pennsylvania Banking and Securities Commission, which I chair, issued a Consent Agreement and Order concluding an investigation by the Pennsylvania Department of Banking and Securities into the securities activities of New Hi-Tech Oil and Gas Discoveries, LLC and Dennis W. Stutes. Copy supplied.

Fall 2012: As nominee to be Chairman of the Pennsylvania Commission on Banking and Securities, I made a very brief opening statement to members of the Pennsylvania Senate Banking & Insurance Committee. The statement made to the members of the Senate Banking & Insurance Committee was made from handwritten notes, which I discarded after Senate Confirmation to that position in the Fall of 2012.

On March 1, 2012, I joined with 109 former state attorneys general of both political parties in an *amicus curiae* brief in support of former Alabama Attorney General Don Siegelman's petition for a writ of certiorari in the case of *Siegelman v. United States*, 2012 U.S. S.Ct. Briefs LEXIS 1004.

On October 26, 2004, I sent a letter to Pennsylvania Governor Edward G. Rendell objecting to his intention to dispatch appointees of his administration to each county in Pennsylvania to oversee efforts of local election officials on Election Day. A copy of the letter is supplied.

On August 16, 2004, I joined with 37 attorneys general of both political parties in a letter to the Office of the Controller of the Currency, Office of Thrift Supervision, National Credit Union Administration, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation providing comments on the agencies' proposed fair credit reporting affiliate marketing regulations. A copy of the letter is supplied.

On June 22, 2004, I submitted to the Pennsylvania House of Representatives a report on pricing factors for auto emissions testing in Pennsylvania. A copy of the report is supplied.

On May 27, 2004, I chaired a community hearing pertaining to the proposed purchase of Phoenixville Hospital by Community Health Systems, Inc. I have no notes, transcript or recording.

On, May 25, 2004, I testified before the House of Representatives Health and Human Services Committee regarding the increasing prices of pharmaceuticals and the role of state attorneys general in helping to combat these increases. I have no notes, transcript or recording.

On March 2, 2004, I testified before the Pennsylvania House of Representatives Appropriations Committee in support of the Office of Attorney General 2004-2005 budget request, Harrisburg, Pennsylvania. I have no notes, transcript or recording.

As the nominee for Pennsylvania Attorney General in 2004, I provided testimony to the Pennsylvania Senate Judiciary Committee. As Attorney General, I provided an opening statement to the Pennsylvania House and Senate Appropriations Committees in support of the budget request made by the Pennsylvania Office of Attorney General in February 2004. The statements made to the Senate Judiciary Committee and the House and Senate Appropriations Committee no longer exist and/or I do not have access to them.

- d. Supply two (2) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

As a statewide public official in Pennsylvania, particularly as Attorney General between December 2003 and January 2005, I made numerous speeches in a variety of settings. Many remarks were made without notes of any kind, while others were made from handwritten notes, typically written on index cards all of which were discarded, either soon after the event in question or when I completed my public service. The following is a list of my speeches or remarks based on a review of my files and the Internet:

July 24, 2008: Guest speaker, Naturalization Ceremony, Ceremonial Courtroom, United States Courthouse, Philadelphia, Pennsylvania. Welcoming remarks to newly naturalized United States citizens. I have no notes, transcript or recording.

United States Courthouse, Sixth and Market Streets, Philadelphia, Pennsylvania 19106.

April 27, 2006: Featured speaker, Consumer Financial Services Litigation Institute, New York, New York. Remarks on the role of state attorney generals in the financial services industry. I have no notes, transcript or recording, but press coverage is supplied. Consumer Financial Litigation Institute, 810 Seventh Ave., New York, New York 10019.

February 24, 2006: Panelist, The Authority and Role of the State Attorney General in the Area of Charitable Trusts and Organizations; The Attempted Sale of the Hershey Foods Corporation by the Hershey Trust Company and Board of Managers of the Milton Hershey School, National State Attorneys General Program, New York, New York. Copy of presentation supplied.

December 7, 2005: Moderator, State Attorneys General: Anticipating Their Investigations and Enforcement panel, Philadelphia, Pennsylvania. Other than to facilitate discussion between the panelists, I do not recall the content of my remarks. I have no notes, transcript or recording. Ballard Spahr Andrews & Ingersoll, LLP, 1735 Market Street, Philadelphia, Pennsylvania 19103.

November 9, 2005: Keynote Speaker, Philadelphia Association of Paralegals Luncheon, Philadelphia, Pennsylvania. I do not recall the content of my remarks. I have no notes, transcript or recording. Philadelphia Association of Paralegals, P.O. Box 59198, Philadelphia, Pennsylvania 19102.

July 12, 2005: Panelist, Philadelphia Bar Association Young Lawyers Division Panel. Remarks to young lawyers on how to find the best career path and succeed in their practice. I have no notes, transcript or recording, but press coverage supplied. Philadelphia Bar Association, 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

December 7, 2004: Speaker, American Bar Association Health Law Section Meeting, Arlington, Virginia. Remarks on trends in attorney general enforcement in antitrust, consumer protection and charitable trust in the health care industry. I have no notes, transcript or recording. American Bar Association, 321 North Clark Street, Chicago, Illinois 06054.

November 19, 2004: Keynote Speaker, Pennsylvania State Police Cadet Graduation Ceremony, Annville, Pennsylvania. Congratulating graduates and discussing the role of the state police in Pennsylvania law enforcement. I have no notes, transcript or recording. Pennsylvania State Police, 1800 Elmerton Avenue, Harrisburg, Pennsylvania 17110.

October, 2004: Welcoming remarks at the Red Ribbon Rally, Harrisburg, Pennsylvania. Urging students from across Pennsylvania to join with the Office of Attorney General and "Team Up Against Drugs." I have no notes, transcript or recording. I do not recall the sponsorship organization.

October 22, 2004: Speaker, Project PEACE Event, Philadelphia, Pennsylvania. Encouraging school students to participate in Project PEACE. I have no notes, transcript or recording. Pennsylvania Bar Association, 100 South Street, Harrisburg, Pennsylvania 17101.

October 23, 2004: Keynote Speaker, *The Cost of Addiction: Fear and Hope*, Greater Wyoming Valley Leadership Forum, Wilkes-Barre, Pennsylvania. I have no notes, transcript or recording. Wyoming Valley Leadership Forum, 4 Public Square, Wilkes-Barre, Pennsylvania 18701.

October 21, 2004: Keynote Speaker, Snyder County Republican Party Dinner, Middleburg, Pennsylvania. General remarks on behalf of Republican candidates. I have no notes, transcript or recording. The Snyder County Republican Party has no physical address.

October 18, 2004: Speaker, Cambria County Republican Rally, Johnstown, Pennsylvania. General remarks on behalf of state, local and national candidates. I have no notes, transcript or recording. Cambria County Republican Committee, 450 Luray Avenue, Johnstown, Pennsylvania 15904.

October 14, 2004: Keynote Speaker, Adams County Eisenhower Dinner, Bendersville, Pennsylvania. Analogizing President Bush's war on terror to General and President Eisenhower's efforts in World War II and after. I have no notes, transcript or recording. Adams County Republican Committee, 395 Buford Avenue, Gettysburg, Pennsylvania 17325.

September 17, 2004: Speaker, Project PEACE Event at Good Shepherd School, Camp Hill, Pennsylvania. Remarks encouraging school students to participate in Project PEACE. I have no notes, transcript or recording. Pennsylvania Bar Association, 100 South Street, Harrisburg, Pennsylvania 17101.

September 14, 2004: Speaker, Bucks County Association of Realtors "Identity Theft Forum," Warminster, Pennsylvania. Role of the Attorney General's Bureau of Consumer Protection in helping people avoid becoming victims of identity theft. I have no notes, transcript or recording, but press coverage is supplied. Bucks County Association of Realtors, 1452 Old York Road, Warminster, Pennsylvania 18974.

August 19, 2004: Meeting with the Editorial Board of the York Daily Record to discuss Attorney General enforcement goals and priorities. I have no notes, transcript or recording. York Daily Record, 1891 Loucks Road, York, Pennsylvania 17404.

August 18, 2004: Meeting with the Reading Eagle Editorial Board to discuss Attorney General enforcement goals and priorities. I have no notes, transcript or recording. Reading Eagle, 340 Court Street, Reading, Pennsylvania 19603.

August 18, 2004: Meeting with the Lancaster New Era Editorial Board to discuss Attorney General enforcement goals and priorities. I have no notes, transcript or recording. Lancaster New Era, 8 West King Street, Lancaster, Pennsylvania 17603.

August 17, 2004: Meeting with the Editorial Board of the Harrisburg Patriot News to discuss Attorney General enforcement goals and priorities. I have no notes, transcript or recording. Harrisburg Patriot News, 2020 Technology Parkway #300, Mechanicsburg, Pennsylvania 17050.

August 13, 2004: Meeting with Centre Daily Times Editorial Board to discuss Attorney General enforcement goals and priorities. I have no notes, transcript or recording. Centre Daily Times, 3400 E. College Avenue, State College, Pennsylvania 16801.

July 30, 2004: Speaker, County and State Detectives' Association Annual Summer Conference, Lancaster, Pennsylvania. Remarks on the importance of the county and state detectives in the role of law enforcement in Pennsylvania. I have no notes, transcript or recording. County Detectives Association of Pennsylvania, 125 Roberts Road, Souderton, Pennsylvania 18964.

July 27, 2004: Meeting with the Altoona Mirror Editorial Board to discuss Attorney General goals and enforcement priorities. I have no notes, transcript or recording. Altoona Mirror, 301 Cayuga Avenue, Altoona, Pennsylvania 16602.

July 26, 2004: Meeting with the Butler Eagle Editorial Board to discuss Attorney General actions and priorities. I have no notes, transcript or recording. Butler Eagle, 114 West Diamond Street, Butler, Pennsylvania 16601.

July 21, 2004: Speaker, 82nd Annual Pennsylvania Sheriffs Association Conference, Wyomissing, Pennsylvania. Remarks as to the role and importance of the Pennsylvania Sheriffs to law enforcement, particularly drug law enforcement, as members of the Attorney General's Municipal Drug Task Forces. I have no notes, transcript or recording. Pennsylvania Sheriffs Association, 2426 North Second Street, Harrisburg, Pennsylvania 17110.

July 14, 2004: Meeting with Lancaster Intelligencer Journal Editorial Board to discuss Attorney General goals and enforcement priorities. I have no notes, transcript or recording. Lancaster Intelligencer Journal, 8 West King Street, Lancaster, Pennsylvania 17603.

July 13, 2004: Speaker, Pennsylvania State Prothonotary and Clerk of Courts Conference, Wilkes-Barre, Pennsylvania. Remarks as to the importance of the roles of the Prothonotaries and Clerks of Courts in the Pennsylvania Judicial System. I have no notes, transcript or recording. The Pennsylvania Prothonotaries and Clerks of Courts Association has no physical address.

July 7, 2004: Meeting with Allentown Morning Call Editorial Board to discuss pharmaceutical pricing and Attorney General enforcement goals and priorities. I have no notes, transcript or recording. Allentown Morning Call, 101 North Sixth Street, Allentown, Pennsylvania 18101.

June 23, 2004: Meeting with Editorial Board of the Scranton Times Newspaper to discuss pharmaceutical pricing and Attorney General enforcement priorities. I have no notes, transcript or recording. Scranton Times, 149 Penn Avenue, Scranton, Pennsylvania 18503.

June 22, 2004: Meeting with Johnstown Tribune-Democrat Editorial Board to discuss pharmaceutical drug pricing and other Attorney General enforcement priorities. I have no notes, transcript or recording. Johnstown Tribute Democrat, 425 Locust Street, Johnstown, Pennsylvania 15907.

June 10, 2004: Speaker, Allegheny County Young Republicans Meeting. Remarks encouraging young people to be involved in the political process. I have no notes, transcript or recording. Young Republicans of Allegheny County, 711 Penn Avenue, Pittsburgh, Pennsylvania 15222.

June 10, 2004: Meeting with Editorial Board of Pittsburgh Post-Gazette to discuss pharmaceutical drug pricing and other Attorney General enforcement priorities. I have no notes, transcript or recording. Pittsburgh Post-Gazette, 34 Boulevard of the Allies, Pittsburgh, Pennsylvania 15222.

May 24, 2004: Keynote Speaker, Greater Hazleton Friends of Scouting Fundraising Dinner, Hazleton, Pennsylvania. Remarks regarding the role and importance of scouting. I have no notes, transcript or recording. Greater Hazleton Friends of Scouting, 21 North Church Street, Hazleton, Pennsylvania 18202.

May 20, 2004: Keynote Speaker, Pennsylvania Bar Institute 2004 Non-Profit Institute Program. Remarks regarding the role of the Attorney General in regulating and monitoring non-profits. I have no notes, transcript or recording. Pennsylvania Bar Institute – Philadelphia, The Wanamaker Building, 100 E. Penn Square, Philadelphia, Pennsylvania 19107.

May 17, 2004: Speaker, Victory 2004 Reception, Bethlehem, Pennsylvania. General remarks on behalf of Republican candidates. I have no notes, transcript or recording. Pennsylvania Republican State Committee, 112 State Street, Harrisburg, Pennsylvania 17101.

May 17, 2004: Speaker, Conference of Chief Deputy Attorneys General, Washington, DC. Remarks regarding the role of the Chief Deputy Attorney General. I have no notes, transcript or recording. National Association of Attorneys General, 2030 M Street NW, Washington, DC 20036.

May 13, 2004: Keynote Speaker, Citizens Crime Commission of the Delaware Valley Law Enforcement Appreciation Banquet, Philadelphia, Pennsylvania. General remarks in support of the Crime Commission's role in law enforcement. I have no notes, transcript or recording. Citizens Crime Commission, 1518 Walnut Street, #902, Philadelphia, Pennsylvania 19103.

May 11, 2004: Speaker, Lincoln-Jackson School, Scranton, Pennsylvania. General remarks about what it is like to be the Attorney General to assembly of third, fourth and fifth graders. I have no notes, transcript or recording. Lincoln-Jackson School, 425 North Washington Avenue, Scranton, Pennsylvania 18503.

May 7, 2004: Speaker at Montgomery County Police Officers Memorial Service, Norristown, Pennsylvania. General remarks of thanks and praise for law enforcement officers who lost their lives in the line of duty. I have no notes, transcript or recording. Montgomery County Courthouse, 2 East Airy Street, Norristown, Pennsylvania 19404.

May 7, 2004: Speaker at Delaware County Law Enforcement Memorial Service, Upland, Pennsylvania. General remarks of thanks and praise for law enforcement officers who lost their lives in the line of duty. I have no notes, transcript or recording. Upland Baptist Church, 325 Main Street, Upland, Pennsylvania 19015.

April 26, 2004: Speaker, Pennsylvania Press Club Luncheon, Harrisburg, Pennsylvania. Transcript of remarks supplied.

April 22, 2004: Speaker, Chester County Republican Committee Spring Reception, Mendenhall, Pennsylvania. General remarks of support for local, state and national candidates. I have no notes, transcript or recording, but press coverage is supplied. Chester County Republican Committee, 15 South Church Street, West Chester, Pennsylvania 19382.

April 21, 2004: Speaker at Law Enforcement for Bush/Cheney Roundtable, Trevoze, Pennsylvania. General remarks in support of candidates, particularly with respect to issues of national security; participant with various police, fire and congressional representatives. I have no notes, transcript or recording. Pennsylvania Republican State Committee, 112 State Street, Harrisburg, Pennsylvania 17101.

April 16, 2004: Keynote speaker, CLE Accredited Symposium for In-House Counsel. General remarks on the rise of authority of state attorneys general and how corporate counsel should respond and deal with attorney general action and investigations. I have no notes, transcript or recording, but press coverage is supplied. The sponsoring organization has no physical address.

April 12, 2004: Speaker, Republican Club of York County Spring Dinner, York, Pennsylvania. Remarks regarding the role of the Office of Attorney General, including actions and priorities for the office and general remarks supporting

Republican Party candidates throughout the Commonwealth. I have no notes, transcript or recording, but press coverage is supplied. Republican Club of York County, 2453 Kingston Court, York, Pennsylvania 17402.

April 1, 2004: Speaker, Pennsylvania Narcotics Officers Association Annual Training Seminar, Harrisburg, Pennsylvania. Remarks regarding the importance of the role of properly trained narcotics officers in the fight against illegal drugs. I have no notes, transcript or recording. Pennsylvania Narcotics Officers Association, 3117 Blytheburn Road, Mountain Top, Pennsylvania 18707.

March 26, 2004: Keynote Speaker, Pennsylvania State Representative Patricia Vance Senior Crime Prevention University, Camp Hill, Pennsylvania. Remarks aimed at educating Pennsylvania seniors on crimes perpetrated against the elderly and to discuss the Attorney General's role in preventing such crimes. I have no notes, transcript or recording. Office of (now State Senator) Patricia Vance, Senate Box 203031, Room 173, Harrisburg, Pennsylvania 17120.

March 12, 2004: Keynote Speaker, Project PEACE Dinner, Altoona, Pennsylvania. Remarks focused on the importance of this joint effort between the Attorney General and the Pennsylvania Bar Association to teach school students non-violent ways to resolve disputes. I have no notes, transcript or recording, but a related press release is supplied in response to Question 12e below. Pennsylvania Bar Association, 100 South Street, Harrisburg, Pennsylvania 17101.

March 1, 2004: Speaker at fundraiser for Thomas W. Corbett's campaign to become Attorney General, Harrisburg, Pennsylvania. General remarks on the qualifications of the candidate to serve as Attorney General. I have no notes, transcript or recording. The sponsoring organization has no physical address.

February 27, 2004: Speaker, Project PEACE Program at Leary Elementary School, Warminster, Pennsylvania. Discussing how students can mediate disagreements peacefully and resolve conflicts in a non-violent manner. I have no notes, transcript or recording, but press coverage is supplied. Pennsylvania Bar Association, 100 South Street, Harrisburg, Pennsylvania 17101.

February 25, 2004: Speaker, High School Lifeskills Championship Program, Harrisburg, Pennsylvania. Providing encouragement to high school academic competitors. I have no notes, transcript or recording. Pennsylvania Office of Attorney General, Strawberry Square, Harrisburg, Pennsylvania 17120.

February 3, 2004: Speaker, Pennsylvania District Attorneys Association Mid-Winter Meeting, Philadelphia, Pennsylvania. Discussion of plans to work cooperatively with the Pennsylvania District Attorneys Association. I have no notes, transcript or recording. Pennsylvania District Attorneys' Association, 2929 North Front Street, Harrisburg, Pennsylvania 17110.

February 2, 2004: Inaugural Address given upon my taking oath of office as the Attorney General of Pennsylvania, Harrisburg, Pennsylvania. Remarks supplied.

December 15, 2003: Speaker at the Investiture of Judge D. Michael Fisher for the United States Court of Appeals for the Third Circuit, United States Courthouse, Pittsburgh, Pennsylvania. Transcript of my remarks is supplied.

October 13, 2001: Speaker, Lancaster County ACTION Breakfast, Leola, Pennsylvania. Remarks in support of Attorney General Mike Fisher's gubernatorial campaign. I have no notes, transcript or recording, but press coverage is supplied. Lancaster County ACTION, 3121-A Mount Joy Road, Mount Joy, Pennsylvania 17552.

December 3, 1998: Presenter, *Emerging Issues in Sexual Harassment Law*. National Association of Attorneys General Issues Management Retreat, Coral Gables, Florida. I have no notes, transcript or recording, but press coverage is supplied. National Association of Attorneys General, 2030 M Street N.W., Washington, DC 20036

March 31, 1998: Speaker, I provided welcoming remarks at a conference entitled *Crime Trends in America* sponsored by the Middle Atlantic Great Lakes Organized Crime Law Enforcement Network ("MAGLOCLEN") in Pittsburgh, Pennsylvania. I have no notes, transcript or recording. MAGLOCLEN, 140 Terry Drive, Newtown, Pennsylvania 18940. Press coverage supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and two (2) copies of the clips or transcripts of these interviews where they are available to you.

As a statewide public official, I interacted with the print, radio and electronic media on a daily basis. I gave numerous press conferences, conducted innumerable radio interviews and spoke regularly with print reporters. I cannot recall all the interviews I have given or the dates on which I conducted them, and to the extent I had any notes from these interviews, they were discarded subsequent to the interview. Most of the subjects of my interaction with members of the media were official actions taken by the office during my tenure as both First Deputy Attorney General and Attorney General of Pennsylvania. The following list represents those interviews and comments to the media that I could identify from a review of my records and an Internet search. I have also listed press releases issued by the Office of Attorney General. These press releases summarized the content of most of my discussions with the media and formed the basis for many of the news stories where I was quoted, whether or not I was actually interviewed.

Interviews

From the conclusion of my service as Attorney General in 2005 to the summer of 2006 and again from the spring of 2008 to the spring or early summer of 2013, I appeared roughly once every four to six weeks as a panelist on Inside Story, a Sunday morning talk show on WPVI TV in Philadelphia. The show features a moderator and four panelists who discuss local, state, regional and national topics. WPVI does not maintain video of the program on its website and does not maintain transcripts of the programs. Press coverage, where available, is supplied.

November 19, 2013: Gina Passarella, *General Counsel Wary of Teaming with Procurement*, The Legal Intelligencer. Copy supplied.

August 14, 2013: Sara Forden and David McLaughlin, *AMR-US Airways Antitrust Suit Seen as Difficult to Settle*, Bloomberg News. Copy supplied.

July 26, 2013: Saranac Hale Spencer and Ben Present, *Legal Implications of Kane's Gay-Marriage Move Uncertain*, The Legal Intelligencer. Copy supplied.

July 24, 2013: Randy Bartley, *A la Carte Laws*, Jeffersonian Democrat. Copy supplied.

July 12, 2013: Brad Bumstead, *Kane Won't Defend PA Law*, Pittsburgh Tribune Review. Copy supplied.

July 12, 2013: Rich Lord, Megan Rogers and Kate Giammarise, *Kane Won't Defend PA Ban on Gay Unions*, Pittsburgh Post-Gazette. Copy supplied.

July 11, 2013: Peter Hall, *Kane Faces Decision on Gay Marriage Suit*, Allentown Morning Call. Copy supplied.

July 2013: Melissa Maleske, *What In-House Counsel Should Know About Working With State Attorneys General*, Inside Counsel Magazine. Copy supplied.

June 26, 2013: Gina Passarella, *Are Mass Torts Turning into Commodity Work? Not Quite*, The Legal Intelligencer. Copy supplied.

June 21, 2013: Gina Passarella, *Third Circuit Could See Rise in Pay-For-Delay Litigation*, The Legal Intelligencer. Copy supplied.

February 19, 2013: Zack Needles, *And if the List Were Longer . . . Top Lateral Runners-Up*, The Legal Intelligencer. Copy supplied.

February 14, 2013: Eric Hornbeck, *Retail Giants' Martha Stewart Fight Shows Contract No-Nos*, Law 360. Copy supplied.

February 12, 2013: Ben Present, *For Moulton's Investigation Into Sandusky Case, Context is Key*, The Legal Intelligencer. Copy supplied.

November 13, 2012: Eric Hornbeck, *Ex-Cephalon GC Joins Cozen O'Connor*, Law 360. Copy supplied.

November 12, 2012: Jeff Blumenthal, *Ex-PA AG Pappert Signs Up with Cozen O'Connor*, Philadelphia Business Journal. Copy supplied. (Reprinted in multiple outlets).

November 12, 2012: *Cozen O'Connor Adds Former Pennsylvania Attorney General and Current Securities Commission Chairman to Firm's Commercial Litigation Group*. Copy supplied.

October 27, 2012: Peter Jackson, *Former PA AG's: Job Demands Experience, Energy*, Associated Press State and Local Wire. Copy supplied.

July 15, 2012: Tim Darragh and Peter Hall, *When Institutions are Sacred; Like the Catholic Church, Penn State Kept Sex Abuse Secret*, Allentown Morning Call. Copy supplied.

May 24, 2012: Paula M. Riley, *A Fundraising Run to Help Children with Terminal Illnesses*, Chestnut Hill Local. Copy supplied.

June 8, 2011: *Cephalon Granted Temporary Restraining Order in Amrix Litigation*, Medical Patent Law Weekly (quote reprinted in multiple outlets). Copy supplied.

June 2, 2011: *Kids to Run for George Fund*, Chestnut Hill Local (Philadelphia, PA). Copy supplied.

May 24, 2011: Kris Mamula, *Federal Judge Bars Mylan's Drug Launch*, Pittsburgh Business Times. Copy supplied.

May 23, 2011: *Cephalon Wins Restraining Order Against Mylan*, Pharma Business Daily Bulletin (quote reprinted in multiple outlets). Copy supplied.

April 2, 2011: *Court Rules on First Set of Patents in Fentora Litigation*, News Rx. Copy supplied.

March 28, 2011: *Judge Denies Challenge to Cephalon Patent for Pain Drug Fentora*, Drug Industry Daily (quote reprinted in multiple outlets). Copy supplied.

March 17, 2011: Jonathan Starkey, *Cephalon Asks Feds to Block Generic*, The News Journal (Wilmington, DE). Copy supplied.

March 14, 2011: *Cephalon Shares Fall After Fentora Patents Decision*, Philadelphia Business Journal (quote reprinted in multiple outlets). Copy supplied.

February 10, 2011: *Brief of Q4 2010 Cephalon Earnings Call*, Fair Disclosure Wire. Copy supplied.

December 21, 2010: *Philadelphia Inquirer Editorial: A Life in Full*, Philadelphia Inquirer. Copy supplied.

October 28, 2010: *Brief of Q3 2010 Cephalon Earnings Call*, Fair Disclosure Wire. Copy supplied.

October 12, 2010: Gina Passarella, *GCs Waiting for Law Firms to Dance*, The Legal Intelligencer. Copy supplied.

September 12, 2010: John Micek, *Corbett Unafraid to Delegate*, Allentown Morning Call. Copy supplied.

August 3, 2010: Christopher Hepp, *FTC Appears to be Winning a Battle with Generic Drug Makers*, Philadelphia Inquirer. Copy supplied.

August 2, 2010: Daniel Rubin, *The George Fund Fills a Need by Focusing on the Care of Dying Children*, Philadelphia Inquirer. Copy supplied.

July 27, 2010: *Brief of Q2 2010 Cephalon Earnings Call*, Fair Disclosure Wire. Copy supplied.

July 22, 2010: Paula Riley, *Children's Races at Boathouse Row to Benefit Pediatric Hospice*, The Chestnut Hill Local (Philadelphia, PA). Copy supplied.

July 1, 2010: John George, *Cephalon at Dispute's Heart in Case Pitting FTC, Watson*, Philadelphia Business Journal. Copy supplied.

June 24, 2010: Susan Decker, *Ending the Silence of Generic Drugmakers*, Bloomberg Business Week. Copy supplied.

May 19, 2010: Sasha Coffner, *Cephalon Settlement with Generic Maker in Nuvigil Patent Suits Could Be Delayed by Ongoing Antitrust Litigation – Experts*, Pharmawire. Copy supplied.

January 13, 2010: Natasha Singer, *Deals to Restrain Generic Drugs Face a Ban in Healthcare Bill*, The New York Times. Copy supplied.

December 5, 2009: *Cephalon Files Patent Infringement Lawsuit Against Teva*, Datamonitor NewsWire (quote reprinted in multiple outlets). Copy supplied.

October 27, 2009: *Brief of Q3 2009 Cephalon Earnings Call*, Fair Disclosure Wire. Copy supplied.

August 4, 2009: *Brief of Q2 2009 Cephalon Earnings Call*, Fair Disclosure Wire. Copy supplied.

July 10, 2009, WPVI TV in Philadelphia – Monica Malpass interviews former Pennsylvania Attorney General Jerry Pappert. Video recording available at <http://abclocal.go.com/wpvi/video?id=6908721>.

May 5, 2009: *Brief of Q1 2009 Cephalon Earnings Call*, Fair Disclosure Wire. Copy supplied.

March 23, 2009: Tami Kamin-Meyer, *Pappert's Perfect Progression: Cephalon GC's Career Path has Prepared Him Well for New Position*, The Legal Intelligencer. Copy supplied.

December 14, 2008: *Cephalon and Eurand File Patent Infringement Lawsuit Against Mylan and Barr Pharmaceuticals*, Lab Business Week (quote reprinted in multiple outlets). Copy supplied.

November 27, 2008, WPVI TV in Philadelphia – Monica Malpass interviews former Pennsylvania Attorney General Jerry Pappert. I have no notes, transcript or recording.

October 28, 2008: *Brief of Q3 2008 Cephalon Earnings Call*, Fair Disclosure Wire. Copy supplied.

October 19, 2008: *Cephalon Concludes All Outstanding Federal and State Government Investigations into Company's Sales and Promotional Practices*, Lab Business Week (quote reprinted in multiple outlets). Copy supplied.

June 29, 2008, WPVI TV in Philadelphia – Monica Malpass interviews former Pennsylvania Attorney General Jerry Pappert. I have no notes, transcript or recording.

June 3, 2008: Press Release, *Cephalon Files Patent Infringement Lawsuit Against Watson Pharmaceuticals* (quotes reprinted in multiple outlets). Copy supplied.

May 14, 2008: *Jerry Pappert to Join Cephalon, Inc. as Executive V.P. and G.C.*, Biotech Week (reprinted in multiple outlets). Copy supplied.

May 1, 2008: Zack Needles: *Pappert Leaving Ballard Spahr for Cephalon*, The Legal Intelligencer. Copy supplied.

February 22, 2008, WPVI TV in Philadelphia – Monica Malpass interviews former Pennsylvania Attorney General Jerry Pappert. Video recording available

at

<http://abclocal.go.com/wpvi/sory?section=news/politics&id=5976151>.

June 24, 2005: Elliot Grossman, *Easton Inquiry Altered by Grand Jury*, Allentown Morning Call. Copy supplied.

May 11, 2005: Charles Thompson, *Rendell's Rivals Make Case for Job; GOP Hopefuls Speak at PEG Dinner*, Harrisburg Patriot News. Copy supplied.

May 10, 2005: Benjamin Lowe, *Trouble in the Family of Milton S. Hershey*, Philadelphia Inquirer. Copy supplied.

May 8, 2005: Les Powell, *Fundraiser Honors Memory of Slain Women*, Harrisburg Patriot News. Copy supplied.

January 11, 2005: *Catholics Warned of Tsunami Aid Scam*, Harrisburg Patriot News. Copy supplied.

January 10, 2005: Jeff Blumenthal, *Pappert to Join Ballard Spahr After Stint as AG*, Pennsylvania Law Weekly. Copy supplied.

January 4, 2005: Porus P. Cooper, *Jerry Pappert Plans to Join Ballard Spahr*, Philadelphia Inquirer. Copy supplied.

December 30, 2004: Mark Scolforo, *Pappert Reviews Brief Tenure as Attorney General*, Associated Press State and Local Wire. Copy supplied.

December 22, 2004: John Bugbee, *Another Ness Prostitution Case*, The York, PA Dispatch. Copy supplied.

December 17, 2004: John L. Micek, *Pappert Happy to End Reign as State Prosecutor; His Year as Attorney General Marked by High Profile Cases*, Allentown Morning Call. Copy supplied.

December 14, 2004: Brad Brumstead, *Slots Bill Likely to Stand as Passed, Attorney General Says*, Pittsburgh Tribune Review. Copy supplied.

December 9, 2004: Mike Crissey, *State Charges Erie Mayor, Two Others Over Real Estate Deals*, Associated Press State and Local Wire. Copy supplied.

October 29, 2004: Mark Fazlollah, *Agencies Ask if Brokers Overcharged*, Philadelphia Inquirer. Copy supplied.

October 18, 2004: Susan Koeppen, *Warning to Consumers Concerning Used Cars Being Sold that were Previously Damaged by Floods*, CBS News The Early Show. Transcript supplied.

October 4, 2004: Jeff Shields, *Taking Law Into Their Own Hands*, Philadelphia Inquirer. Copy supplied.

September 8, 2004: John Bull, *State Sues to Block Gaming Board Choice*, Allentown Morning Call. Copy supplied.

Summer 2004: Linda Williams, *Setting the Bar High for Public Service: A Profile of Attorney General Jerry Pappert*, Pennsylvania Bar Association News and Views. Copy supplied.

August 25, 2004: Jeff Shields, *Attorney General Wants More Say Over Gaming*, Philadelphia Inquirer. Copy supplied.

August 23, 2004: Fawn Vrazo, *Painkiller Crackdown Has Hurt True Sufferers*, Philadelphia Inquirer. Copy supplied.

August 21, 2004: Kori Walter, *Pennsylvania Attorney General Faults Gambling Law*, Reading Eagle. Copy supplied.

July 27, 2004: Charles Lardner, *No Local Control Over Slots Zoning*, Lancaster Intelligencer Journal. Copy supplied.

July 1, 2004: Linda Kleindienst, *7 Oil Giants Hand Over Documents*, Orlando Sentinel. Copy supplied.

June 23, 2004: *State Probe Backs Stations on Cost of Emissions Testing*, Associated Press State and Local Wire. Copy supplied.

June 23, 2004: Ad Crable, *Probe: Prices on Emissions Tests Not Fixed*, Lancaster New Era. Copy supplied.

May 6, 2004: Guest on live call-in show on Pennsylvania Cable Network (PCN). Responding to callers' questions about actions taken and priorities for the Office of Attorney General. I have no notes, transcript or recording.

April 27, 2004: Alice Dembner, *MEDCO Settles with US, 20 States, Agrees to Curbs and to Pay \$29 Million*, The Boston Globe. Copy supplied.

April 27, 2004: Linda Loyd, *Medco to Settle Charges from 20 States that it Switched Medications*, Philadelphia Inquirer. Copy supplied.

April 14, 2004: *Police: Narcotics Agents Shoot and Kill Suspect*, Associated Press State and Local Wire. Copy supplied.

March 17, 2004: Guest, discussing the pharmaceutical pricing litigation that I filed as Attorney General on the C-SPAN "Washington Journal" program. I have no notes, transcript or recording.

March 11, 2004: Mark Scolforo, *PA Sues Drug Makers Over Pricing Practices*, Associated Press State and Local Wire. Copy supplied.

March 6, 2004: Bill Bergstrom, *Examiner Accused in Illegal Drivers' License Scheme*, Associated Press State and Local Wire. Copy supplied.

February 23, 2004: Guest on Representative Melissa Murphy Weber's Cable Television Show, discussing the role of the Attorney General in preventing crime against Pennsylvania's seniors. I have no notes, transcript or recording.

February 22, 2004: John L. Micek, *Price of Justice Straining Budget*, Allentown Morning Call. Copy supplied.

February 12, 2004: Dan Lewerenz, *State College Woman Charged with Stealing \$120,000 from PennDOT*, Associated Press State and Local Wire. Copy supplied.

February 11, 2004: Guest on the Pennsylvania Newsmakers Television Show, presenting goals and priorities as Attorney General of Pennsylvania. I have no notes, transcript or recording.

2004: *State Accuses Former Notary of Fraud in Mortgage Scheme*. Associated Press State and Local Wire. Copy supplied.

January 9, 2004: *Erie Doctor Charged with Manslaughter, Illegally Prescribing Drugs*, Associated Press State and Local Wire. Copy supplied.

December 14, 2003: John L. Micek, *Snelling Lands It*, Allentown Morning Call. Copy supplied.

December 13, 2003: Associated Press, *State's New Top Cop to be Deputy Who Argued Against Hershey Sale*. Available at <http://tinyurl.com/k68oo9n>.

December 13, 2003: Associated Press, *Acting Attorney General Named*, Philadelphia Inquirer. Copy supplied.

May 11, 2003: Stephanie Strom, *Strong-Arm Shaking of Charities Raises Ethics Qualms*, New York Times. Copy supplied.

November 16, 2002: David Marcus, *Hershey Trust Cleans House*, Daily Deal. Copy supplied.

November 15, 2002: Wendy Tanaka, *Hershey Trust Board Shrinks, Adds Local Residents*, Philadelphia Inquirer. Copy supplied.

November 15, 2002: Martha Raffaele, *Hershey Trust Reorganizes Board*, Associated Press. Copy supplied.

November 15, 2002: Tamar Lewin, *10 Board Members to Leave Hershey's Charitable Trust*, New York Times. Copy supplied.

November 15, 2002: Brett Marcy, *Hershey Trust Board Gains Local Flavor as Sale Advocates Ousted in Overhaul*, Harrisburg Patriot-News. Copy supplied.

November 14, 2002: Marc Levy, *Hershey Trust Trims Board by Six, Adding Four Local Residents*, Associated Press. Copy supplied.

October 11, 2002: Associated Press State and Local Wire, *Senate Passes Bill to Discourage Future Sale of Hershey Foods*. Copy supplied.

October 10, 2002: John Chase and John McCormick, *Ryan, Rival Clash Over Casino Issue*, Chicago Tribune. Copy supplied.

September 22, 2002: John L. Micek, *Mike Who? Fisher and His Campaign Low-Key*, Allentown Morning Call. Copy supplied.

September 12, 2002: George Strawley, *State AG Says Sale Not Necessary; Hershey Says It's Not His Business*, Pittsburgh Post-Gazette. Copy supplied.

October 4, 1999: Glen Justice, *In Tobacco Suit, Grumblings Over Lawyer Fees*, Philadelphia Inquirer. Copy supplied.

April 24, 1997: Mario F. Cattabiani, *Pennsylvania Taking Tobacco 'Cartel' to Court*, Allentown Morning Call. Copy supplied.

April 24, 1997: John M. Baer, *Firm Ties*, Philadelphia Daily News. Copy supplied.

April 24, 1997: Robert Moran, *Pa. Suit Tobacco Firms Target Minors*, Philadelphia Inquirer. Copy supplied.

April 24, 1997: Frank Reeves and Peter Shelly, *PA Joins States Suing Tobacco Firm*, Pittsburgh Post-Gazette. Copy supplied.

December 10, 1996: Megan O'Matz, *Some Transitions Bumpy in State Government*, Allentown Morning Call. Copy supplied.

December 7, 1996: Peter Shelly, *Fisher Outspent Kohn*, Pittsburgh Post-Gazette. Copy supplied.

November 6, 1996: Lawrence Walsh and Pete Shelly, *Fisher Races from Behind to Beat Kohn*, Pittsburgh Post-Gazette. Copy supplied.

November 3, 1996: Robert Zausner, *Candidates for State Office Wage Blitz on the Undecided*, Philadelphia Inquirer. Copy supplied.

November 2, 1996: Frank Reeves, *Poll Has Fisher and Hafer Leading*, Pittsburgh Post-Gazette. Copy supplied.

November 1, 1996: Peter Shelly and Frank Reeves, *Money Blitz Fuels Hopefuls' End Game*, Pittsburgh Post-Gazette. Copy supplied.

October 31, 1996: John M. Baer, *Poll Offers Hope for GOP*, Philadelphia Daily News. Copy supplied.

October 31, 1996: Peter J. Shelly, *Fisher Campaign Letter to Lutheran Churches Assailed*, Pittsburgh Post-Gazette. Copy supplied.

October 29, 1996: Robert Zausner, *For Kohn, Fund Raising is Relative*, Philadelphia Inquirer. Copy supplied.

October 7, 1996: Frank Reeves and Peter Shelly, *Casey, Hafer and Fisher Lead Battles for Pa. Posts*, Pittsburgh Post-Gazette. Copy supplied.

October 4, 1996: John M. Baer, *Protestors Crash Fisher Fund-Raiser*, Philadelphia Daily News. Copy supplied.

October 3, 1996: John M. Baer, *Poll: Voters Ignoring State Races*, Philadelphia Daily News. Copy supplied.

September 26, 1996: *Fisher Took But Will Return Tobacco PAC Money*, Pittsburgh Post-Gazette. Copy supplied.

September 22, 1996: *Fisher to Return Check*, Pittsburgh Post-Gazette. Copy supplied.

June 1, 1996: *Foe Queries Candidate*, Pittsburgh Post-Gazette. Copy supplied.

Press Conferences

January 11, 2005: Press conference announcing the breakup of a \$1 million cocaine and marijuana ring in York, Pennsylvania. Representative press coverage supplied.

January 6, 2005: Press conference announcing arrest of former PennDOT supervisor for bribery and tampering with records. Representative press coverage supplied.

January 6, 2005: Press conference announcing criminal charges against six in a scheme to defraud home buyers. Representative press coverage supplied.

December 17, 2004: Press conference announcing arrests of 62 drug dealers in Blair County. I have no notes, transcript or recording.

December 9, 2004: Press conference with local district attorneys to announce arrests of 18 drug dealers in Carbon and Schuylkill counties. Representative press coverage supplied.

December 8, 2004: Press conference announcing criminal charges against Mayor of Erie and two others in real estate probe. Representative press coverage supplied.

December 6, 2004: Press conference announcing the filing of lawsuit against four people for selling bogus academic degrees. Representative press coverage supplied.

November 22, 2004: Press conference announcing the arrests of six men charged in an undercover Internet child sex sting. I have no notes, transcript or recording.

November 18, 2004: Press conference with Westmoreland County District Attorney announcing arrests of 27 alleged drug dealers. Representative press coverage supplied.

November 17, 2004: Press conference announcing the filing of charges against a doctor for trading drugs for sex with patients. Representative press coverage supplied.

October 28, 2004: Press conference announcing filing of lawsuit against 16 people for engaging in elaborate statewide living trust scheme. Representative press coverage supplied.

October 19, 2004: Press conference announcing arrests of 19 individuals operating major cocaine ring in northwestern Pennsylvania. Representative press coverage supplied.

October 12, 2004: Press conference announcing arrests in multi-million dollar crack cocaine distribution ring in Union, Northumberland, Snyder and Montour counties. I have no notes, transcript or recording.

October 4, 2004: Press conference announcing arrest of doctor in Luzerne County for illegally prescribing prescription drugs and money laundering. Representative press coverage supplied.

September 30, 2004: Press conference announcing the arrests of numerous alleged cocaine dealers in eastern and southeastern Pennsylvania. Representative press coverage supplied.

September 23, 2004: Press conference announcing the arrests of three doctors in New Castle, Pennsylvania for alleged Medicaid fraud and drug law violations. Representative press coverage supplied.

September 8, 2004: Press conference announcing the filing of a lawsuit against Blair County bridal shop for failure to deliver gowns and wedding apparel. Representative press coverage supplied.

August 26, 2004: Press conference with Blair County District Attorney announcing the arrests of 28 alleged drug dealers. I have no notes, transcript or recording.

August 25, 2004: Press conference announcing the arrest of a Philadelphia doctor and 22 other suspects in \$1 million insurance scam. Representative press coverage supplied.

August 24, 2004: Press conference announcing theft charges against a Harrisburg woman for allegedly stealing \$400,000 from the Pennsylvania Department of Community and Economic Development. Representative press coverage supplied.

August 23, 2004: Press conference with Dauphin County District Attorney to announce sex charges against two county paramedics. I have no notes, transcript or recording.

August 20, 2004: Press conference announcing the filing of a lawsuit against a western Pennsylvania pre-need funeral business for false and deceptive advertising and failing to deliver goods and services. Representative press coverage supplied.

July 30, 2004: Press conference with United States Attorney Patrick Meehan to announce resolution of civil and criminal cases against Shering-Plough. Representative press coverage supplied.

July 29, 2004: Press conference with Bucks County District Attorney to announce the arrests of 14 alleged cocaine and marijuana dealers in Bucks County. Representative press coverage supplied.

July 27, 2004: Press conference to announce the filing of a lawsuit against the manufacturer of bullet proof vests for failing to disclose flaws in the products. Representative press coverage supplied.

July 26, 2004: Press conference with Pennsylvania State Police to announce animal cruelty charges against two men for promoting dogfighting. Representative press coverage supplied.

July 8, 2004: Press conference with Philadelphia District Attorney and police to announce the capture of 15 alleged heroin dealers in Philadelphia. Representative press coverage supplied.

June 30, 2004: Press conference with Luzerne County District Attorney to announce the arrests of nine alleged drug dealers operating in Luzerne County. Representative press coverage supplied.

June 29, 2004: Press conference to announce distribution of settlement proceeds from antitrust investigation. I have no notes, transcript or recording.

June 24, 2004: Press conference to announce the filing of a lawsuit against a bank and collection company for alleged predatory lending. I have no notes, transcript or recording.

June 23, 2004: Press conference with Bradford County District Attorney to announce the arrests of 26 alleged Bradford County drug dealers. I have no notes, transcript or recording.

June 4, 2004: Press conference to announce insurance fraud charges against six people who allegedly participated in a "slip and fall" insurance scam. Representative press coverage supplied.

June 1, 2004: Press conference with Beaver County District Attorney to announce the arrests of 17 alleged drug dealers operating in Beaver and Allegheny Counties. Representative press coverage supplied.

May 4, 2004: Press conference with Mercer County District Attorney to announce the arrests of 21 alleged drug dealers operating in Mercer County. I have no notes, transcript or recording.

April 29, 2014: Press conference with Dauphin County District Attorney to announce arrests of two men charged in undercover child sex sting. Representative press coverage supplied.

April 23, 2004: Press Conference with various Pennsylvania District Attorneys in support of Tom Corbett for Attorney General. General remarks of support for Mr. Corbett's candidacy. I have no notes, transcript or recording.

April 20, 2004: Press conference with Westmoreland County District Attorney to announce arrests of over 50 alleged drug dealers operating in Westmoreland County. Representative press coverage supplied.

April 13, 2004: Press conference with Pennsylvania State Police and Sunbury, Pennsylvania Police to announce the arrests of seven Northumberland County prison guards. Representative press coverage supplied.

April 13, 15, and 22 and May 3, 4, and 11, 2004: Multiple press conferences throughout Pennsylvania to warn of prescription drug abuse problem. Representative press coverage supplied.

April 8, 2004: Press conference with Blair and Columbia County District Attorneys to announce the capture of nine suspected crack cocaine dealers operating in Blair and Columbia Counties. I have no notes, transcript or recording.

March 30, 2004: Press conference to announce charges and ethics violations against Lackawanna County prison warden and other officials. Representative press coverage supplied.

March 24, 2004: Press conference with Armstrong and Westmoreland County District Attorneys to announce the arrests of four alleged methamphetamine dealers operating in Armstrong and Westmoreland Counties. Representative press coverage supplied.

March 23, 2004: Press conference with Lawrence County District Attorney to announce the capture of 23 suspected drug dealers who were allegedly selling cocaine in Lawrence County. Representative press coverage supplied.

March 18, 2004: Press conference with Luzerne County District Attorney to announce the arrests of 17 alleged marijuana dealers operating in Luzerne County. Representative press coverage supplied.

March 10, 2004: Press conference to announce the filing of a lawsuit against 13 major drug companies for unlawful and deceptive pricing and sales practices. Representative press coverage supplied.

March 5, 2004: Press conference to announce charges against two suspects for allegedly participating in a large scale driver's license scam in Philadelphia. Representative press coverage supplied.

March 3, 2004: Press conference to announce distribution of settlement funds from price-fixing investigation. I have no notes, transcript or recording.

February 25, 2004: Press conference to announce the filing of charges against three Democratic officials for allegedly forging signatures on nominating petitions. Representative press coverage supplied.

February 20, 2004: Press conference with Carbon County District Attorney to announce the arrests of 15 alleged drug dealers operating in Carbon County. Representative press coverage supplied.

February 12, 2004: Press conference to announce the filing of criminal charges against a former PennDOT worker for allegedly stealing \$123,000 from PennDOT. Representative press coverage supplied.

February 6, 2004: Press conference to announce the filing of a lawsuit against a national mail order catalog and Internet sales company. I have no notes, transcript or recording.

January 29, 2004: Press conference to announce the filing of a lawsuit against a State College, Pennsylvania real estate corporation for failing to return security deposits to tenants. Representative press coverage supplied.

January 28, 2004: Press conference with Luzerne County District Attorney to announce the capture of 21 suspected cocaine dealers allegedly operating in Luzerne County. Representative press coverage supplied.

January 22, 2004: Press conference to announce the payment of \$11.1 million to the Pennsylvania Medicaid program. I have no notes, transcript or recording.

January 14, 2004: Press conference to announce the recovery of \$1.3 million for the Pennsylvania Medicaid program. Representative press coverage supplied.

January 9, 2004: Press conference with Blair County District Attorney to announce the arrests of 41 alleged drug dealers operating in Blair County. I have no notes, transcript or recording.

January 8, 2004: Press conference with Erie County District Attorney to announce the filing of involuntary manslaughter charges against an Erie doctor. Representative press coverage supplied.

December 19, 2003: Press conference with York County District Attorney to announce the capture of 10 suspected heroin dealers operating in York County. I have no notes, transcript or recording.

Attorney General Press Releases

All press releases identified below were issued by the Pennsylvania Office of Attorney General. Copies of every press release listed are supplied, except where noted.

January 14, 2005: *Pike County Businessmen and Company Accused of Violating State's 'Do Not Call' Law.*

January 13, 2005: *AG Pappert Announces Charges Against Former Bradford County Water and Sewer Authority Employee.*

January 11, 2005: *AG Pappert Announces Break-Up of \$1 Million York Cocaine and Marijuana Ring.*

January 6, 2005: *AG Pappert Announces Fraud Charges Against Monroe County Home Builder.*

January 6, 2005: *AG Pappert Announces Arrest of Former PennDOT Supervisor for Bribery and Tampering with Records.*

January 4, 2005: *Pennsylvania Attorney General Pappert to Join Ballard.*

January 3, 2005: *AG Pappert Warns Consumers Not to be Fooled by Bogus Charities Claiming to Assist Natural Disaster Victims.*

January 3, 2005: *Lehigh County Pool Contractor and Self Proclaimed Pastor Accused of Accepting \$125,000 from Consumers Without Preforming Work.*

December 22, 2004: *AG Pappert Announces Tax Charges Against Restaurant Owner in Philadelphia.*

December 22, 2004: *AG Pappert Issues Health Warning to Consumers Who Purchased the Blood Testing Strips.*

December 21, 2004: *AG Pappert, PA State Police Announce Prostitution Charges Against York Man.*

December 20, 2004: *AG Pappert Recovers More Than \$6 Million for PA Medicaid Program in Settlement With Schering-Plough Over Illegal and Fraudulent Drug Pricing.*

December 17, 2004: *United States Attorney Meehan and Attorney General Pappert Announce Charges in Cocaine Distribution Case.* Press release issued by United States Attorney's Office.

December 17, 2004: *AG Pappert and DA Gorman Announce Arrests of as Many as 62 Alleged Drug Dealers Operating in Blair County.*

December 16, 2004: *AG Pappert Dispels E-Mails Sent to PA Consumers Regarding Upcoming 411 Wireless Telephone Directory.*

December 15, 2004: *AG Pappert Sues Luzerne County Wedding Photographers and Businesses.*

December 14, 2004: *AG Pappert Announces Winners of "Team Up Against Drugs" Calendar Contest.*

December 13, 2004: *AG Pappert Applauds Montgomery County Court Decision Approving Barnes Foundation Location Plan to Insure Long Term Survival.*

December 8, 2004: *AG Pappert Announces Charges Against Erie Mayor and Two Others in Real Estate Probe.*

December 6, 2004: *AG Pappert Names Defendants in Elaborate E-Mail Scheme to Sell Bogus Academic Degrees.*

December 6, 2004: *AG Pappert Announces Major Seizure of Cocaine and Drug Trafficking Arrests in Allegheny County.*

November 24, 2004: *AG Pappert Sues Northampton County Debris Hauler.*

November 23, 2004: *AG Pappert Announces Arrests in Philadelphia Cocaine and Methamphetamine Distribution Ring.*

November 22, 2004: *AG Pappert Announces Arrests of Six Men Charged in Undercover Internet Child Sex Sting.*

November 18, 2004: *AG Pappert and DA Peck Announce Arrests of as Many of 35 Suspected Drug Dealers.*

November 17, 2004: *AG Pappert Charges Washington County Doctor with Prescribing Oxycontin for Sex.*

November 10, 2004: *Bank and Collection Company to Pay \$450,000 in Fines and Costs Following Predatory Lending Investigation.*

November 10, 2004: *Westmoreland County Dry Cleaning Business Owner to Reopen this Saturday to Return Consumer Property.*

November 10, 2004: *Lackawanna County Contractor Sued; AG Seeks Fines and Bans on Conducting Business Until Consumers are Refunded.*

November 8, 2004: *Statement of Attorney General Pappert on Commonwealth Court Decision Voiding Coy Appointment to PA Gaming Control Board.*

November 5, 2004: *Owner of Two Westmoreland County Dry Cleaning Businesses to Return Clothes and Items to Consumers.*

November 4, 2004: *AG Pappert Announces Arrest of Major Pittsburgh Area Cocaine Distributor.*

October 28, 2004: *AG Pappert Seeks Injunction to Stop Erie man from the Unauthorized Practice of Law.*

October 28, 2004: *AG Pappert Names Sixteen Defendants in "Living Trust" Sales Scheme.*

October 27, 2004: *AG Pappert Announces New Charges Against Luzerne County Doctor Accused of Illegally Prescribing Drugs.*

October 27, 2004: *AG Pappert, Pa. Bar Association and Philadelphia School District CEO Bring Conflict Resolution Program to Philadelphia Schools.*

October 26, 2004: *AG Pappert Reaches Agreement in Bankruptcy Requiring Luzerne County Taxidermist to Return "Trophies" to Consumers.*

October 25, 2004: *AG Pappert Announces Charges Against Two Beaver County Residents for Selling Marijuana at State Liquor Store.*

October 19, 2004: *AG Pappert Announces Arrests in Major Cocaine Ring Operating in Northwestern Pennsylvania.*

October 12, 2004: *AG Pappert Announces Arrests in Multi-Million Dollar Crack Cocaine Distribution Ring.*

October 12, 2004: *Florida-Based Travel Promoter Ordered to Refund Consumers and Cease Conducting Business in PA.*

October 12, 2004: *AG Pappert Issues Statement on Lambert Ruling.*

October 7, 2004: *AG Pappert Announces Bribery and Related Charges Against Former Erie PennDOT Purchasing Agent.*

October 6, 2004: *AG Pappert Announces Drug and Other Criminal Charges Against Carbon County Police Chief.*

October 5, 2004: *AG Pappert Obtains Refunds for Southeastern PA Health Club Members.*

October 4, 2004: *AG Pappert Announces Arrest of Luzerne County Doctor on Charges of Illegally Prescribing Drugs.*

September 30, 2004: *AG Pappert Announces Arrest of Lancaster County Doctor on Medicaid Fraud Charges.*

September 30, 2004: *AG Pappert Announces Arrests in Lehigh and Delaware Valley Cocaine Distribution Ring.*

September 23, 2004: *AG Pappert Announces Charges of Medicaid Fraud and Prescription Drug Violations Against Three Lawrence County Doctors.*

September 21, 2004: *AG Pappert Warns Consumers About Potential Flood Related Scams.*

September 21, 2004: *AG Pappert Gives Opening Statement at Resumption of Barnes Foundation Hearing.*

September 17, 2004: *AG Pappert Charges State Representative Habay with Using Commonwealth Employees for Political Purposes.*

September 17, 2004: *AG Pappert Launches Project PEACE Conflict Resolution Program at Cumberland County Elementary School.*

September 14, 2004: *AG Pappert Reaches Agreement with CVS Pharmacy to Refund Consumers Who Paid Full Price for Drug Prescriptions Related to Auto Accidents.*

September 13, 2004: *AG Pappert Announces Charges Against a Blair County Pharmacist and Others in Illegal Prescription Drug Scheme.*

September 9, 2004: *Owner of Three PA Mobile Home Parks to Cease Discriminatory Practices; Restitution Available to Affected Residents.*

September 8, 2004: *AG Pappert Sues PA Bridal Shop Owners.*

September 8, 2004: *AG Pappert Announces National Agreement with Rite Aid Corporation Aimed at Reducing Underage Cigarette Sales.*

September 7, 2004: *AG Pappert Files Lawsuit Asking Court to Declare Coy Appointment to PA Gaming Control Board Unconstitutional.*

August 31, 2004: *Georgia-Based Company to Comply with Pennsylvania Do Not Call Law.*

August 26, 2004: *AG Pappert and DA Gorman Announce Arrests of as Many as 28 Alleged Drug Dealers Operating in Blair County.*

August 26, 2004: *Two Defendants Pay \$50,000 to Victims in Western Pennsylvania Home Improvement Scheme.*

August 25, 2004: *AG Pappert Files \$2.7 Million Lawsuit Against 20 Defendants in Pocono Land/Home Sales and Finance Scheme.*

August 25, 2004: *AG Pappert Announces Arrest of Philadelphia Doctor and 22 Other Suspects in \$1 Million Insurance Fraud Scam.*

August 24, 2004: *AG Pappert Announces Settlement with Chester County Based National Mail Order Catalog.*

August 24, 2004: *AG Pappert Announces Theft Charges Against Former Harrisburg Woman Who Allegedly Stole \$400,000 From Department of Community and Economic Development.*

August 23, 2004: *AG Pappert, DA Marsico Announce Sex Charges Against Two Dauphin County Paramedics.*

August 20, 2004: *AG Pappert Announces Break-Up of Erie Cocaine Distribution Ring.*

August 20, 2004: *AG Pappert Sues Western Pennsylvania Pre-Need Funeral Business.*

August 12, 2004: *AG Pappert Takes Action Against Monroe County Used Car Dealer.*

August 11, 2004: *AG Pappert Releases \$14,000 to Help Recruit and Train PA Firefighters and Promote Emergency Services.*

August 6, 2004: *Philadelphia-Based Comcast Cable to Comply with Pennsylvania "Do Not Call" Law.*

August 6, 2004: *AG Pappert Announces Sentence of York County Man Who Falsified Credentials and Double-Billed Medicaid.*

August 3, 2004: *AG Pappert Commends State Department of Banking Study on Monroe County Home Foreclosure Filings.*

July 29, 2004: *AG Pappert and DA Gibbons Announce Arrests of as Many as 14 Suspected Cocaine and Marijuana Dealers in Bucks County.*

July 27, 2004: *AG Pappert Accuses Bulletproof Vest Maker of Failing to Disclose Potentially Life Threatening Flaws in Equipment Sold to Pennsylvania Law Enforcement Agencies.*

July 26, 2004: *AG Pappert and Pennsylvania State Police Charge two men with Promoting Dog Fighting in Pennsylvania and Throughout the Nation.*

July 21, 2004: *AG Pappert Says PA Consumers Will Receive Nearly \$1.6 Million in Drug Settlement.*

July 21, 2004: *AG Pappert Obtains \$9,000 for Consumers Denied Refunds from a Lancaster County Motel Owner.*

July 9, 2004: *AG Pappert Sues PA Refinance Business for "Do Not Call" Violations.*

July 8, 2004: *AG Pappert Obtains \$15,000 for Victims of Home Improvement Fraud in Northeastern Pennsylvania.*

July 8, 2004: *AG Pappert, DA Abraham and Philadelphia Police Department Announce Break-Up of Large Scale Philadelphia Heroin Ring.*

July 7, 2004: *AG Pappert Announces Another Arrest in Lackawanna County Prison Investigation.*

June 30, 2004: *AG Pappert, DA Lupas Announce Arrests of as Many as 29 Alleged Luzerne County Drug Dealers.*

June 29, 2004: *AG Pappert Delivers \$35,000 to Penn State Nutrition Links Program.*

June 25, 2004: *AG Pappert Secures \$433,000 for PA Medicaid Program under Settlements with Rite Aid and Wal-Mart.*

June 24, 2004: *AG Pappert Takes Action Against Bank and Collection Company in Predatory Lending/Credit Card Scheme.*

June 23, 2004: *AG Pappert, DA Downs Announce Arrests of Up to 26 Bradford County Drug Dealers.*

June 21, 2004: *York-Based Cable TV Service Provider to Fully Refund Customers.*

June 18, 2004: *AG Pappert Seeks Refunds for Consumers Following Investigation into Westmoreland County Car Dealer.*

June 14, 2004: *AG Pappert Announces Guilty Plea of Former Greenville Police Officer.*

June 14, 2004: *AG Pappert Announces US Supreme Court Decision in Precedent Setting Commonwealth Case.*

June 10, 2004: *AG Pappert Announces Multi-State Action Against Car Dealers and Credit Company in Alleged Inflated Lease Payoff Scheme.*

June 4, 2004: *AG Pappert Announces Arrests of up to Six Blair County Residents in Large Scale "Slip and Fall" Insurance Scam.*

June 2, 2004: *AG Pappert Announces Return of More Than \$272,000 to Pennsylvania Cancer Patients.*

June 2, 2004: *AG Pappert and United Refinery Announce Reimbursement Program for Gas Customers.*

June 1, 2004: *AG Pappert Announces Arrests of 17 Alleged Drug Dealers Operating in Beaver and Allegheny Counties.*

May 28, 2004: *AG Pappert Accuses Former Western PA Water Purification Company and President of False Advertising and Illegal Business Practices.*

May 27, 2004: *Lehigh County Man Barred from Selling Home Heating Oil in Pennsylvania.*

May 26, 2004: *Carbon County Man Barred from Conducting Sales Over the Internet.*

May 25, 2004: *AG Pappert Obtains Nearly \$15,000 in Restitution for Lehigh Valley Victims of Home Improvement Fraud.*

May 24, 2004: *AG Pappert Announces Guilty Plea of "Operation Bone Crusher" Ring Leader.*

May 20, 2004: *AG Pappert Obtains Full Refunds for Consumers who Purchased Audio/Video Equipment on the Internet.*

May 13, 2004: *AG Pappert Announces \$38 Million Multi-State Settlement with Maker of Anti-Seizure Medication.*

May 11, 2004: *AG Pappert to Share Pennsylvania "Do Not Call" List with the FTC.*

May 11, 2004: *AG Pappert Warns of Prescription Drug Abuse Problem in Lackawanna/Luzerne Counties.*

May 10, 2004: *Memphis-Based Terminix International to Fully Disclose Fuel Surcharges; PA Consumers Can Apply for Refunds.*

May 7, 2004: *AG Pappert Sues Susquehanna County Modular Home Builder.*

May 7, 2004: *AG Pappert Sues Allegheny County Wedding Photographer.*

May 6, 2004: *Delaware County-Based Mortgage Company Pays \$20,000 and Agrees to Comply with PA "Do Not Call" Law.*

May 4, 2004: *AG Pappert, Mercer County District Attorney Epstein Announce Arrests of up to 21 Mercer County Drug Dealers.*

April 30, 2004: *AG Pappert Charges Two Clearfield County Men with Drug Offenses.*

April 29, 2004: *AG Pappert, DA Marsico Announce Arrests of Two Men Charged in Undercover Internet Child Sex Sting.*

April 29, 2004: *Bucks County-Based Mover Banned from Working in Pennsylvania.*

April 28, 2004: *AG Pappert Recognizes Drug Free Calendar Contest Winner.*

April 28, 2004: *AG Pappert Announces US Supreme Court Decision Upholding PA Congressional Redistricting Plan.*

April 27, 2004: *AG Pappert Announces Prison Sentence of Lancaster County Man Who Swindled Nearly \$3 Million from Dozens of Senior Citizens.*

April 26, 2004: *AG Pappert Announces \$22.7 Million Settlement with Medco Health Solutions.*

April 26, 2004: *AG Pappert Asks PA Supreme Court to Hear Scher Appeal.*

April 22, 2004: *AG Pappert Warns of Prescription Drug Abuse Problem in Philadelphia.*

April 21, 2004: *Allegheny County Firms Named in "Do Not Call" Lawsuit.*

April 20, 2004: *AG Pappert Announces Arrests of as Many as 58 Alleged Drug Dealers Operating in Westmoreland County.*

April 20, 2004: *Lancaster County Motel Owner Accused of Failing to Return Money for Rooms that Were Unusable or Cancelled.*

April 19, 2004: *AG Pappert Seeks Court Order from Commonwealth Court Securing the Voting Rights of Pennsylvanians Overseas.*

April 16, 2004: *AG Pappert Joins the Effort to Secure the Voting Rights of Pennsylvanians Serving Overseas.*

April 15, 2004: *AG Pappert Warns of Prescription Drug Abuse Problem in York.*

April 14, 2004: *AG Pappert Announces Forgery Charges Against Greater Johnstown School District Teacher.*

April 13, 2004: *AG Pappert Issues Statement on Monroe County Shooting.*

April 13, 2004: *AG Pappert Warns of Prescription Drug Abuse Problem in Lehigh Valley.*

April 13, 2004: *AG Pappert, PSP Announce Charges Against Seven Current and Former Northumberland County Prison Guards.*

April 13, 2004: *AG Pappert Charges Two Philadelphia Business Men for Failing to Pay Taxes.*

April 8, 2004: *AG Pappert Sues Virginia-Based Sports Photographer.*

April 8, 2004: *AG Pappert, DA's Gorman and Tulowitzki Announce Break-Up of Multi-Million Dollar Crack Cocaine Organization.*

April 7, 2004: *New Jersey Corporation Pays \$8,400 Fine Following Investigation into "Do Not Call" Complaints.*

April 6, 2004: *AG Pappert Reaches Settlement with Tobacco Company Allowing its Cigarettes to be sold in Pennsylvania.*

April 6, 2004: *AG Pappert Issues Advisory to Homeowners Affected in State's Pocono Land Fraud Probe.*

April 6, 2004: *AG Pappert Will Ask PA Supreme Court to Hear Scher Appeal.*

April 1, 2004: *Connecticut-Based Company Pays \$40,000; Refunds Available for Eligible Consumers Claiming Unauthorized Charges.*

April 1, 2004: *Statement from Attorney General Pappert Regarding the Death of Two Bradford County Sheriffs' Deputies.*

March 31, 2004: *Delaware County Carpet Cleaning Business Pays \$4,600 Fine and Agrees to Comply with "Do Not Call" Law.*

March 30, 2004: *AG Pappert Announces Arrests in Lackawanna County Prison Investigation.*

March 25, 2004: *AG Pappert Announces Arrests of Three Alleged Wilkesburg Heroin Dealers; \$400,000 Worth of Heroin Seized.*

March 24, 2004: *AG Pappert, Westmoreland County DA Peck and Armstrong County DA Andreassi Announce Break-Up of Meth Ring.*

March 23, 2004: *AG Pappert, Lawrence County DA Mangino Announce Charges Against 23 Alleged New Castle Drug Dealers.*

March 23, 2004: *AG Pappert Sues Pittsburgh Company for "Do Not Call" Violations.*

March 19, 2004: *AG Pappert Announces Arrests of Two Alleged Monroeville Cocaine Dealers.*

March 18, 2004: *AG Pappert and DA Lupas Announce Charges Against 17 Alleged Luzerne County Marijuana Dealers.*

March 15, 2004: *AG Pappert Files Suit Against Allegheny County Appraiser.*

March 12, 2004: *AG Pappert, DA Marsico Announce Sentences of Two Men Charged in Undercover Internet Child Sex Sting.*

March 12, 2004: *AG Pappert and PA Bar Association host Project PEACE Anti-Violence Training for Elementary Schools.*

March 12, 2004: *AG Pappert Announces Environmental Crimes Charges Against State College Man for Illegal Dumping.*

March 12, 2004: *AG Pappert and DA Pettit Announce Charges Against Washington County Heroin Dealers.*

March 10, 2004: *AG Pappert Sues 13 Major Drug Companies for Unlawful and Deceptive Pricing and Sales Practices.*

March 9, 2004: *AG Pappert Obtains Restitution for Former Bucks County Gym Members.*

March 5, 2004: *AG Pappert Announces Charges Against Two Suspects in PennDOT Driver Licensing Scam.*

March 4, 2004: *AG Pappert Seeks Fines and Restitution from Luzerne County Home Builder Accused of Shoddy Workmanship.*

March 4, 2004: *AG Pappert Obtains Restitution in Cases Against Florida Telemarketers.*

March 3, 2004: *AG Pappert Recovers \$1.5 Million in Settlement Funds for PACE Program; Money to Pay for Prescription Drugs for Uninsured Seniors.*

March 2, 2004: *AG Pappert Announces Arrests of Three Alleged Lackawanna County Cocaine Dealers.*

February 27, 2004: *AG Pappert Commends Bucks County Elementary School for Adopting Project PEACE Program.*

February 26, 2004: *AG Pappert Files Contempt Charges Against Former Luzerne County Contractor.*

February 26, 2004: *AG Pappert Reaches \$440,000 Settlement with Florida Tobacco Company.*

February 25, 2004: *AG Pappert Sues New Jersey-Based Satellite TV and Cellular Phone Companies.*

February 25, 2004: *AG Pappert Announces Forgery and Election Law Charges Against 58th Ward Democratic Party Workers.*

February 25, 2004: *AG Pappert Announces North East High School as Winner of "LifeSmarts" Championship.*

February 23, 2004: *AG Pappert Announces Guilty Plea and Sentence in Lehigh County Sludge Case.*

February 20, 2004: *AG Pappert and Carbon County DA Dobias Announce Arrests of as Many as 14 Alleged Drug Dealers Operating in Carbon County.*

February 19, 2004: *AG Pappert Sues Blair County-Based Charity over Alleged Illegal Fundraising.*

February 19, 2004: *AG Pappert Announces Release of Refund Checks in Compact Disc Antitrust Case.*

February 13, 2004: *AG Pappert, DA Lupas Announce Arrests of Five Heroin Suspects.*

February 12, 2004: *AG Pappert Announces Theft Charges Against Former PennDOT Purchasing Agent.*

February 12, 2004: *AG Pappert Sues Cambria County Business Following Investigation into "Do Not Call" Violations.*

February 11, 2004: *Texas-Based Cellular Company and Its Telemarketer Pay Fine in State's "Do Not Call" Investigation.*

February 6, 2004: *AG Pappert Files Suit Against Chester County-Based National Mail Order Catalog and the Internet Sales Company.*

February 4, 2004: *AG Pappert Named to National Committees Aimed at Stopping Pharmaceutical Overpricing and Preventing Prescription Drug Abuse.*

February 3, 2004: *AG Pappert Names First Deputy and Director of Criminal Law Division.*

January 30, 2004: *Philadelphia Hearing Aid Business Pays \$7,500 Fine Following Investigation Into "Do Not Call" Complaints.*

January 29, 2004: *AG Pappert Sues Major State College Rental Property Owner Accused of Violating PA Landlord Tenant Act.*

January 28, 2004: *AG Pappert and DA Lupas Announce as Many as 22 Additional Arrests in \$2 Million Luzerne County Cocaine Trafficking Ring.*

January 27, 2004: *AG Pappert Warns Consumers About Credit Fraud and Billing Scams During National Consumer Protection Week.*

January 26, 2004: *AG Pappert Sues Cable TV Service Provider and Operator.*

January 22, 2004: *AG Pappert Files Suit Against Former PA Notary Involved in Case Against Pittsburgh Home Improvement Contractor.*

January 22, 2004: *AG Pappert Recovers \$11.1 Million for PA Medicaid Program in Settlements with Bayer and Glaxo Smith Kline.*

January 20, 2004: *Acting AG Pappert Sues PA Warranty Company.*

January 20, 2004: *PA Senate Unanimously Confirms Pappert as Attorney General.*

January 14, 2004: *Acting AG Pappert Obtains Nearly \$1.3 Million for PA Medicaid Program.*

January 9, 2004: *Acting AG Pappert and DA Gorman Announce Arrests of as Many as 41 Alleged Drug Dealers Operating in Blair County.*

January 8, 2004: *Acting AG Pappert and Erie DA Foulk Announce Involuntary Manslaughter Charges Against Doctor.* I have been unable to obtain a copy of the press release, but representative press coverage is supplied.

January 6, 2004: *Acting AG Pappert Announces Lawsuit Against Company Claiming to Restore Suspended Drivers Licenses.*

January 6, 2004: *Acting AG Pappert Announces Settlement with Time Life, Inc. in "Do Not Call" Case.*

January 5, 2004: *Acting AG Pappert Comments on Pennsylvania Supreme Court Decision on Older Adults Protective Services Act.* I have been unable to obtain a copy of the press release, but representative press coverage is supplied.

January 2, 2004: *Acting AG Pappert Files Contempt of Court Charges Against Clearfield County Hearing Aid Business and Operators.*

December 30, 2003: *Acting AG Pappert Files Charges Against Former Monroe County Attorney for Stealing \$1.3M From Clients.* I have been unable to obtain a copy of the press release, but representative press coverage is supplied.

December 24, 2003: *Acting AG Pappert Obtains Restitution for Philadelphia Health Club Members After Gym Permanently Shuts Down.*

December 22, 2003: *Acting AG Pappert Announce Environmental Crimes Charges Against Dover Man and York International, Inc.*

December 19, 2003: *Acting AG Pappert and York DA Rebert Announce Break-Up of York County Heroin Ring.*

December 17, 2003: *Acting AG Pappert Announces Arrests of Three Alleged Allentown Cocaine Dealers.*

December 15, 2003: *Acting AG Pappert to Host Winners of "Team Up Against Drugs" Calendar Contest.*

January 26, 2001: *PA Supreme Court Upholds State Pardons Board Law.*

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial offices.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
- i. Of these, approximately what percent were:
- jury trials? _____%; bench trials _____% [total 100%]
- civil proceedings? _____%; criminal proceedings? _____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
 - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal**: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- I have not served as a judge.
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Since October 17, 2012, I served as the Chairman of the Pennsylvania Banking and Securities Commission after being nominated by Governor Thomas W. Corbett and confirmed by the Pennsylvania Senate.

From October 2006 to July 2012, I served as a member of the Commonwealth Financing Authority after being appointed by Pennsylvania Senate President Pro Tempore Robert C. Jubelirer.

From December 15, 2003 to January 20, 2005, I served as the Attorney General of Pennsylvania after being nominated by Pennsylvania Governor Edward G. Rendell and confirmed by the Pennsylvania Senate.

From January 21, 1997 to December 15, 2003, I served as the First Deputy Attorney General of Pennsylvania after being appointed by Attorney General D. Michael Fisher.

I have never been a candidate for public office, nor have I ever had an unsuccessful nomination for appointed office

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

As Attorney General for Pennsylvania in 2004, I spoke at a number of events urging general support for local, state and national Republican candidates. In particular, I recall endorsing Tom Corbett to succeed me as Attorney General in various settings, including a March 2004 fundraising event and a press conference held on April 23, 2004. I also publicly supported the Bush-Cheney campaign at a Law Enforcement for Bush/Cheney event on April 21, 2004.

On October 13, 2001, I gave remarks in support of Mike Fisher's gubernatorial campaign at a Lancaster County ACTION Breakfast. From April through November 1996, I was the campaign manager for Mike Fisher for Attorney General. I managed all aspects of then-State Senator Mike Fisher's campaign for Attorney General of Pennsylvania.

From May through November 1994, I was a campaign volunteer for Rick Santorum for Senate. I helped plan the logistics for press and public events, organized meetings, researched policy issues, provided transportation, and stuffed envelopes.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have never served as a judicial clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1988 – 1997
Duane Morris, LLP
30 South 17th Street
Philadelphia, Pennsylvania 19103
Associate

1997 – 2005
Office of the Attorney General
Strawberry Square, 16th Floor
Harrisburg, Pennsylvania 17120
First Deputy Attorney General of Pennsylvania (1997 – 2003)
Attorney General of Pennsylvania (2003 – 2005)

2005 – 2008
Ballard Spahr, LLP
1735 Market Street
51st Floor
Philadelphia, Pennsylvania 19103
Partner

2008 – 2012
Cephalon, Inc.
41 Moores Road
Frazer, Pennsylvania 19355
Executive Vice President, General Counsel and Secretary

2012 – Present
Cozen O'Connor
1900 Market Street
Philadelphia, Pennsylvania 19103
Partner

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

For the first few years of my legal career as an associate attorney at Duane Morris, my practice consisted largely of document reviews and drafting of memoranda, motions and legal briefs as well as drafting and answering written discovery. I then began to focus more on the drafting of pleadings, the taking and defending of depositions, arguing discovery motions, litigating motions to dismiss, motions for summary judgment and other procedural matters, as well as assisting more senior lawyers in jury trials. In the early to mid-1990s, in addition to all of the above tasks, I began handling arbitrations and served as lead trial counsel in a federal jury trial that resulted in a verdict in favor of the firm's client.

During my service as First Deputy Attorney General of Pennsylvania, from 1997 to 2003, the character of my practice changed to one more of management of strategic direction and decision-making in both civil and criminal matters. In addition to my management responsibilities, I occasionally edited pleadings, briefs, criminal complaints, affidavits of probable cause, proposed settlement agreements, consent decrees, and other documents relevant to the practice of the Office of Attorney General. I successfully argued three appeals in the Pennsylvania Supreme Court, as well as an appeal in the United States Supreme Court. I also served as lead trial and appellate counsel in the Office's successful action to prevent the sale of the Hershey Foods Corporation.

As the Attorney General of Pennsylvania from 2003 to 2005, I was not able to personally try any cases or handle any appeals and my role became one of final decision making with respect to all civil and criminal actions taken by the Office of Attorney General, with the accompanying responsibility to explain my actions and priorities to the people of Pennsylvania.

After leaving the Attorney General's office, I returned to private practice at the firm of Ballard Spahr, LLP, where I was a partner from February 2005 to May 2008. During this time, I resumed a litigation practice and served as lead trial counsel in a federal jury trial, representing a local law enforcement agency in a case that settled after a week of trial. I also represented and counseled various clients in responding to requests for documents and other information in governmental investigations, advocating the firm's clients' interests in front of those regulatory bodies, and advising and counseling clients on how to avoid becoming the subject of governmental investigations, with an emphasis on best practices and corporate compliance.

Upon becoming Executive Vice President, General Counsel and Secretary of Cephalon, Inc., in May 2008, my responsibilities included managing and overseeing all company legal matters including litigation, transactions, as well as government relations and corporate communications. In this role, my clients were the company and its shareholders. I oversaw the defense of investigations and litigation brought by federal and state regulators, the prosecution of patent infringement litigation pursuant to the Hatch-Waxman Act, the defense of class actions, shareholder litigation and other major commercial cases, the company's defense to a hostile takeover attempt and subsequent negotiations and sale of the company to a "white knight."

Upon returning to private practice at Cozen O'Connor in November 2012, I resumed the representation of individuals and companies facing regulatory and enforcement investigations where representative clients include a major healthcare provider and insurer and the Commonwealth of Pennsylvania.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my career at Duane Morris, typical clients included larger commercial entities such as insurance companies and insurance brokerage firms, governmental entities, banks, architect and engineering firms, construction companies, engineering and utility contractors and various individuals. During my public service in the Pennsylvania Office of Attorney General, my clients were the citizens of Pennsylvania as well as the Commonwealth and its various agencies and employees. At the

Ballard Spahr firm, my typical clients included individuals and public companies in various industries, including automobile dealers, a major cable television and Internet provider, a major telephone company, an international brewing company, a regional port authority and its attached police force, and an international biopharmaceutical company. While at Cephalon, my clients were the company and its shareholders. Upon returning to private practice in November 2012, I resumed the representation of individuals and companies facing regulatory and enforcement investigations where representative clients include a major healthcare provider and insurer, the Commonwealth of Pennsylvania, an individual employee of a pharmaceutical company and a Philadelphia based university.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Roughly half of my legal career has been spent in active litigation, with the remainder of my legal career spent in various management capacities.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 40% |
| 2. courts of record: | 60% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 75% |
| 2. criminal proceedings: | 25% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried two cases to verdict as lead trial counsel, one in federal court and the other in state court. I tried one case to verdict in federal court as associate counsel.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 33% |
| 2. non-jury: | 67% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

In 2001, I represented the Pennsylvania Department of Corrections in arguing before the Court the case of *Timothy Booth v. C.O. Churner, et al.*, 532 U.S. 731 (2001). Copies of the briefs and the oral argument transcript are included.

I was also listed as counsel on briefs filed in the Court in the cases below, with cites to the briefs provided. For the *amicus curiae* briefs I am listed, typically with other state attorneys general, to support a fellow attorney general and his or her office in a particular matter. I did not have any personal involvement in any of those cases, beyond being listed on the brief. In the cases of *Pompilla v. Beard*, *Hall v. Pennsylvania Board of Probation and Parole* and *Pennsylvania State Police v. Suders* I am listed as counsel on the merits briefs because my office represented the Pennsylvania Department of Corrections, Board of Probation and Parole and State Police, respectively. I similarly had no personal involvement in these matters.

Siegelman v. United States, Brief of *Amici Curiae* in Support of Petition for Certiorari (2012 U.S. S.Ct. Briefs LEXIS 1004).

McBride v. Ortiz, Brief of *Amici Curiae* in Support of Petitioners (2005 WL 154022).

Rahn v. Robb, Brief of *Amici Curiae* in Support of Petitioners (2004 WL 2915266).

Pompilla v. Beard, Brief for Respondent (2004 U.S. S. Ct. Briefs LEXIS 861).

McCleary County v. ACLU of Kentucky, Brief for *Amici Curiae* in Support of Petitioners (2003 U.S. S. Ct. Briefs LEXIS 772).

Van Orden v. Perry, Brief of *Amici Curiae* in Support of Respondents (2003 U.S. S. Ct. Briefs LEXIS 811).

Lingle v. Chevron USA, Inc., Brief of *Amici Curiae* in Support of Petitioners, (2004 U.S. S. Ct. Briefs 876).

Metro-Goldwyn Mayer Studios v. Grokster, Brief of *Amici Curiae* in Support of Petitioners (2004 WL 2569664).

Smith v. Massachusetts, Brief of *Amici Curiae* in Support of Respondent (2004 U.S. S. Ct. Briefs LEXIS 695).

Rhines v. Weber, Brief of *Amici Curiae* in Support of Respondent (2004 WL 2070857).

Hall v. Pennsylvania Board of Probation and Parole, Brief in Opposition (2004 WL 2070857).

Pompilla v. Horn, Brief in Opposition (2004 WL 2216341).

Veneman v. Livestock Marketing Ass'n, Brief of *Amici Curiae* in Support of Petitioners (2004 U.S. S. Ct. Briefs LEXIS 830).

Granholm v. Heald, Brief of *Amici Curiae* in Support of Petitioners (2004 U.S. S. Ct. Briefs LEXIS 460).

Wilkinson v. Dotson, Brief of *Amici Curiae* in Support of Petitioner (2004 U.S. S. Ct. Briefs LEXIS 429).

Groody v. Doe, Petition for a Writ of Certiorari (2004 WL 1628913).

Devenpeck v. Alford, Brief of *Amici Curiae* in Support of Petitioners (2004 U.S. S. Ct. Briefs LEXIS 407).

Cooper Indus. v. Aviall Servs., Brief of *Amici Curiae* in Support of Respondent (2004 U.S. S. Ct. Briefs LEXIS 297).

Pennsylvania State Police v. Suders, Reply Brief for Petitioner (2004 WL 596123).

Nelson v. Campbell, Brief of *Amici Curiae* Supporting Respondents (2004 U.S. S. Ct. Briefs LEXIS 249).

Pennsylvania State Police v. Suders, Brief for Petitioner (2004 U.S. S. Ct. Briefs LEXIS 99).

Elk Grove Unified School District v. Newdow, Brief of *Amici Curiae* in Support of Petitioners (2003 U.S. S. Ct. Briefs LEXIS 1076).

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
 1. *Wolfington, et al. v. Delaware River Port Authority of Pennsylvania and New Jersey, et al.*, 04-cv-04655 (E.D. Pa. 2004).

On September 16, 2003, the plaintiff was being issued a parking ticket by two police officers of the Delaware River Port Authority of Pennsylvania and New Jersey ("DRPA"). An argument with the officers ensued, and the plaintiff fled the scene with the officers in pursuit. The plaintiff was subsequently arrested and brought suit in October 2004 against the DRPA and the two officers for alleged violation of her civil rights during and after her arrest. The plaintiff also asserted various state law claims, some of which were brought against all defendants, others solely against the DRPA and the remainder solely against the officers. The DRPA was sued primarily under the theory of *respondeat superior*, as the officers' employer. I became lead defense counsel for the DRPA after joining the Ballard Spahr firm in February 2005. I conducted or supervised all depositions, discovery and motion practice, trial memoranda and all related trial papers and served as lead trial counsel. The Section 1983 claim against the DRPA was dismissed with prejudice prior to trial. The litigation settled after four days of trial. The trial was held from May 9 through May 12, 2005 before Judge John P. Fullam in the United States District Court for the Eastern District of Pennsylvania.

The plaintiff was represented by James L. Griffith, Fox Rothschild, LLP, 10 Sentry Parkway, Suite 200, P.O. Box 3001, Blue Bell, Pennsylvania 19422, (610) 397-3925. The individual officers, Loebell and Manny, were represented by James J. Black, III and Jeffrey B. Miceli, Black & Gerngross, P.C. 1617 JFK Boulevard, Suite 1575, Philadelphia, Pennsylvania 19103, (215) 636-1650.

2. *The Barnes Foundation, a Corporation*, No. 58,788 (Pa.Ct.Com.Pl. 2004).

Dr. Barnes created The Barnes Foundation in 1922 to promote the advancement of education and the appreciation of the fine arts and to establish and maintain an art gallery and other necessary buildings for the exhibition of works of art. Dr. Barnes thereafter donated his artwork to the Foundation to enable it to accomplish its charitable purposes. He funded the Foundation with an initial endowment, but over time the endowment became depleted and the Foundation was unable to cover its general operating expenses and other needs. The trust document pursuant to which Dr. Barnes donated his artwork contained many restrictions that gave the Foundation's board very little flexibility in raising the funds necessary to maintain the endowment.

In the hopes of ensuring its ability to continue its purpose in the future and to improve its finances, the Foundation reached agreement with leading philanthropic institutions in Philadelphia that promised to help the Foundation raise approximately \$150 million, predicated upon the relocation of its art collection. Such a relocation required approval by the Orphans Court. While decisions regarding deviations from trusts are for the Orphans Court to decide, the Office of Attorney General is the only party with legal standing in the courts of the Commonwealth to represent the interests of the public at large in those matters. Consistent with that responsibility, my office and I concluded that if the averments of the Foundation's Petition were supported by credible evidence, we were prepared to recommend to the court that the requested relief be granted. I studied the history of the Barnes Foundation and the trust indenture which created it and directed my office's strategy in the litigation. The case was in litigation for several years; I had responsibility over the matter from 2003 to early 2005 and personally gave the opening

statement in court on September 21, 2004. On December 13, 2004, the court issued its decision concurring with my recommendation. Judge Stanley R. Ott presided over the proceedings.

The Barnes Foundation was represented by Arlin M. Adams and Ralph Wellington of Schnaeder Harrison Segal & Lewis, LLP, 1600 Market Street, Suite 3600, Philadelphia, Pennsylvania 19103, (215) 751-2000. Lead counsel for the Commonwealth was Senior Deputy Attorney General Lawrence Barth, Office of the Attorney General of Pennsylvania, 21 South 12th Street, Philadelphia, Pennsylvania 19107, (215) 560-2402.

3. *In re: Milton Hershey School Trust*, No. 712, Year of 1963 (Pa. Ct. Com. Pl. 2002); *In re: Milton Hershey School Trust*, 807 A.2d 324 (Pa. Commw. Ct. 2002).

In the summer of 2002, the Hershey Trust Company and the Board of Managers of the Milton Hershey School proposed to sell their controlling interest in the Hershey Foods Corporation, which was held in trust for the school. On August 23, 2002, the Attorney General filed a petition for an *ex parte* injunction against the trust company and Board of Managers to preclude any sale until it could be properly considered by the Court and the Office of Attorney General.

The Common Pleas Court hearing on the injunction request was held on September 3, 2002 and the Judge issued the injunction order on September 4, 2002. On September 18, 2002, the Commonwealth Court issued its Order and Opinion upholding the Common Pleas Court injunction, concluding that the trial judge had reasonable grounds upon which to grant the preliminary injunction. The trust company and school thereafter ceased its efforts to sell the company. Senior Judge Warren G. Morgan presided over the Common Pleas court hearing and entered the preliminary injunction and President Judge James Colins, Judges Bernard McGinley, Dan Pellegrini, Bonnie Leadbetter and Robert Simpson of the Commonwealth Court heard the appeal and affirmed the trial court decision, with only Judge Pellegrini dissenting from the court's opinion. I was sole counsel at the trial court hearing and personally argued the appeal.

The Board of Managers of the Milton Hershey School and the Hershey Trust Company as Trustee of the Milton S. and Catherine S. Hershey Trust were represented by Jack M. Stover, Buchanan Ingersoll & Rooney, P.C., 409 North Second Street, Suite 500, Harrisburg, Pennsylvania 17101, (717) 237-4837.

4. *Booth v. C.O. Churner, et al.*, 532 U.S. 731 (2001).

Petitioner Booth was a Pennsylvania state prison inmate when he brought a Section 1983 action claiming that various corrections officers violated his 8th Amendment rights by using excessive force against him and denying him medical attention to treat ensuing injuries. He sought various forms of injunctive relief and money damages. At the time, Pennsylvania provided an administrative grievance and appeals system, which addressed Booth's complaints but had no provision for the recovery of money damages. Before suing in federal court, Booth filed an administrative grievance but did not seek administrative review after the prison authority denied his requests.

Booth's failure to appeal administratively led the district court to dismiss his complaint without prejudice for failure to exhaust administrative remedies under the Prison Litigation Reform Act of 1995. The Third Circuit Court of Appeals affirmed and the Supreme Court of the United States granted certiorari based on a split in the circuits. On behalf of the Pennsylvania Department of Corrections, I argued the appeal, representing the interests of the various corrections officers who had been sued. The Supreme Court ruled unanimously in favor of the corrections officers, holding that an inmate seeking only money damages must complete any prison administrative process capable of addressing the inmate's complaint and providing some form of relief, even if that process does not make specific provision for monetary relief. I argued the case on March 20, 2001 and the Court announced its decision on May 29, 2001.

Arguing the case for the petitioner was Nancy Winkelman of Schnaeder, Harrison, Segal and Lewis, LLP, 1600 Market Street, Suite 3600, Philadelphia, Pennsylvania 19103, (215) 751-2342. Arguing as *amicus curiae* and supporting the respondents was Irving L. Gornstein, Assistant Solicitor General, Department of Justice. Mr. Gornstein is now the Executive Director of the Supreme Court Institute at Georgetown Law School, 600 New Jersey Avenue, N.W., Washington, DC 20001, (202) 662-9934.

5. *Pennsylvania Prison Society, et al. v. Commonwealth of Pennsylvania, et al.*, 565 Pa. 526; 776 A.2d 971 (2001).

On behalf of the Commonwealth defendants, I argued this case on May 1, 2000, in the Supreme Court of Pennsylvania and the court handed down its decision on July 25, 2001. The case concerned the constitutionality of constitutional amendments that altered the procedures and composition of the Pennsylvania Board of Pardons. The Prison Society challenged the constitutionality of these amendments, arguing that because the ballot question that presented the proposed amendments to the voters contained five proposed amendments in the form of one question, it violated a separate constitutional provision. The Commonwealth Court of Pennsylvania held that the ballot question was invalid and the Commonwealth appealed to the Supreme Court of Pennsylvania. In a split decision, the Supreme Court of Pennsylvania reversed the Commonwealth Court and concluded that the ballot question was not constitutionally infirm.

Representing the Pennsylvania Prison Society on the appeal was William C. Costopoulos, 831 Market Street, Lemoyne, Pennsylvania 17043, (717) 761-2121.

6. *Commonwealth of Pennsylvania v. Maker, et al.*, 563 Pa. 454; 761 A.2d 1167 (2000).

I argued this case in the Supreme Court of Pennsylvania, defending a constitutional challenge to the Pennsylvania Bottle Club Law which made it a summary offense to permit any "lewd, immoral or improper entertainment" in a "bottle club." A "bottle club" is an establishment which is not licensed to sell alcoholic beverages, but in which alcoholic beverages may either be brought in by customers or be provided by the management. "Lewd, immoral or improper entertainment" is a term of art extensively defined by statute, but which includes nudity, acts of real or simulated sexual intercourse, and other forms of grossly sexual "entertainment." The appellants in this case contended

that the statute violated their freedom of expression under the First Amendment to the United States Constitution. I argued the case in 1999 and the court issued its per curiam opinion in favor of the Commonwealth on November 27, 2000.

Other counsel for the Commonwealth was John G. Knorr, III, Chief Deputy Attorney General, Office of the Attorney General, 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120, (717) 787-1144. Counsel for the Appellants was Lawrence Casella, Eckert Seamans Cherin & Mellott, LLC, 600 Grant Street, 44th Floor, Pittsburgh, Pennsylvania 15219, (412) 341-2536.

7. *Allied Signal, Inc. v. Amcast International Corp.*, 177 F. Supp. 2d 713 (S.D. Ohio 2001).

For many years, Allied Signal had disposed of waste from a coal tar products plant it operated in Ohio into the Goldkamp Disposal Area ("GDA"). Amcast, which had operated a foundry in the same Ohio town, also had dumped waste into the GDA over a period of many years. Allied was subsequently ordered by the United States Department Environmental Protection Agency ("EPA") to remediate the GDA and in doing so, incurred several million dollars in costs. In January 1992, Allied Signal sued Amcast under the CERCLA statute to recover a portion of those costs. As a senior associate at Duane Morris, I was brought into the case in late 1994 and took and defended depositions and assisted with the drafting of all pre-trial papers. I then assisted lead counsel in trying the case from February 9 through February 17, 1995 in the United States District Court for the Southern District of Ohio. This was a bench trial. I conducted the direct and cross-examinations of numerous fact witnesses at trial and otherwise assisted lead counsel in all other aspects of the trial presentation. Following the proceedings, I assisted in the drafting of all post-trial briefing, memoranda and other necessary tasks. On January 12, 2001, after I had left the Duane Morris firm, the court entered judgment in favor of Allied Signal for over \$1.1 million, with an accompanying order that Amcast would pay 2% of certain of Allied's response costs under CERCLA after that date and 28% of its other response costs after that point in time. Judge Walter H. Rice presided over the litigation.

Lead counsel for Allied Signal, Inc. was David C. Toomey, who has since retired from the practice of law. Amcast Industrial Corporation was represented by Ann Wightman and Donald Ireland, Faruki, Ireland & Cox, P.L.L., 500 Courthouse Plaza, S.W., 10 North Ludlow Street, Dayton, Ohio 45402, (937) 227-3700.

8. *Tork-Hiis, et al. v. Commonwealth of Pennsylvania, et al.*, 558 Pa. 170; 735 A.2d 1256 (1999).

I represented the Commonwealth in arguing this appeal in the Supreme Court of Pennsylvania. The issue before the court was whether a plaintiff who has commenced against the Commonwealth a tort action for damages may amend that action to add a new and distinct Commonwealth party after the expiration of the applicable statute of limitations. The Commonwealth Court of Pennsylvania had held that the plaintiff could so amend the complaint and I argued that a "Commonwealth party" is an entity distinct

from the “Commonwealth” and cannot be substituted for the Commonwealth after the expiration of the applicable statute of limitations if the amendment, in effect, adds a “new party.” I argued the case on April 27, 1999 and the Court issued its decision and opinion on August 18, 1999 in favor of the Commonwealth. The case was argued before the full Supreme Court of Pennsylvania with Chief Justice Flaherty writing for a unanimous Court.

Representing the plaintiffs in the appeal were Howard A. Rothenberg, Howard Rothenberg & Associates, 345 Wyoming Avenue, Suite 210, Scranton, Pennsylvania 18503, (570) 207-2889 and Steven G. Bresset, Bresset & Santora, LLC, 606 Church Street, Honesdale, Pennsylvania 18431, (570) 253-5953.

9. *McNasby v. The Graham Company, et al.*, 92-cv-01851 (E.D.Pa. 1992).

Mr. McNasby was an executive at The Graham Company (“Graham”), a Philadelphia-based commercial insurance brokerage firm. McNasby left his employment with Graham to join a rival company and took Graham clients with him to his new employer in an alleged violation of the covenant not to compete in his employment agreement. In March 1992, McNasby sued Graham for defamation and Graham filed a counterclaim against McNasby, Rollins Burdick Hunter Company (“RBH”) and AON Corporation (“AON”). As a senior associate at Duane Morris, I assisted lead counsel in representing Graham throughout the litigation. I helped to draft many of the pleadings, written discovery, motions, trial memoranda, points for charge and all other papers. I took and defended numerous depositions and assisted lead counsel at the jury trial. The litigation settled after six days of trial. The trial was held June 16 to 22, 1993 before Judge Jan E. DuBois.

Lead counsel for The Graham Company was Gene E.K. Pratter (formerly at Duane, Morris), United States District Court for the Eastern District of Pennsylvania, Tenth Floor, United States Courthouse, Sixth and Market Streets, Philadelphia, Pennsylvania 19106, (267) 299-7350. Mr. McNasby’s counsel was Michael L. Banks, Morgan Lewis, 1701 Market Street, Philadelphia, Pennsylvania 19103, (215) 963-5387. Mr. Banks also represented RBH and AON.

10. *Friedman v. Principal Mutual Life Insurance Company*, 91-cv-04424 (E.D.Pa. 1991).

Mr. Friedman was insured under a disability income policy issued by Principal Mutual. He sought benefits under the policy, his entitlement to which Principal Mutual disputed based on the belief that Friedman was not in fact disabled under the policy’s terms. As a mid-level associate at Duane Morris, I represented Principal Mutual. I conducted all discovery and motion practice and prepared all trial related papers and memoranda. I served as lead trial counsel for the four-day jury trial, which resulted in a complete defense verdict for our firm’s client. The plaintiff filed a motion for a new trial, which was denied. Friedman did not appeal the Court’s decision. The trial took place from November 19 to 22, 1991 and the court’s opinion denying the plaintiff’s motion for a new trial was issued on May 8, 1992. Judge Clarence C. Newcomer presided over the litigation; he has since passed away.

Friedman was represented by Bruce W. McCullough, Bodell Bove, LLC, 1225 North King Street, Suite 1000, Wilmington, Delaware 19801, (302) 655-6749.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While in the Office of Attorney General, I pursued a number of significant legal activities on behalf of the people of Pennsylvania in the areas of drug law enforcement, consumer protection, civil litigation, antitrust, charitable trusts, criminal law enforcement and others. Summarized below are some of the initiatives that the Office undertook during my tenure, all of which would have been pursued in 2004.

The Office filed a lawsuit against 13 major pharmaceutical companies for unlawful and deceptive pricing and sales practices. I alleged that those companies engaged in a complex scheme to raise drug prices by artificially inflating the cost of their drugs thus forcing consumers and state agencies to pay significantly higher prices for prescription medications. The lawsuit sought recovery for individual Pennsylvania consumers who were financially harmed by the higher prices, notably seniors who under the federal Medicare program paid 20% of the cost of their drugs and thus paid more for prescription medications when the companies raised their prices. I also sought recovery on behalf of Commonwealth programs and agencies that purchase drugs including Medicaid, the Pharmaceutical Assistance Contract for the Elderly (PACE) and the Pennsylvania Employees Benefits Trust Fund (PEBTF), which entities pay for prescription drugs based on a price set by the companies.

The Office filed a number of civil lawsuits regarding fraudulent and misleading practices by real estate brokers and appraisers, who deliberately overstated the value of properties and newly built homes to home buyers and lenders throughout Northeastern Pennsylvania. These cases resulted in Consent Petitions and Orders filed in the Commonwealth Court of Pennsylvania providing for injunctive relief, \$750,000 in consumer restitution, \$175,000 in civil penalties and \$385,000 in costs.

The Office filed felony charges against a sitting member of the Pennsylvania House of Representatives for having his legislative staff work on campaign events during Commonwealth business hours, effectively substituting his taxpayer-funded legislative staff for what should have been a separate political campaign. The subsequent conviction of former Representative Jeffrey Habay, and the appellate courts' upholding of that conviction, created the precedent necessary for the broader "Bonusgate" prosecutions and convictions which took place after I had left office.

The Office brought litigation that established an important precedent in Pennsylvania, which successfully prevented a sitting member of the Pennsylvania House of Representatives from resigning his position to accept appointment to another, higher paying, position in state government.

I have not performed any lobbying activities on behalf of any clients or organizations.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have never taught a course, though once a year I speak to a class at University of Pennsylvania Law School on the topics of the practice of law and professional satisfaction.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If confirmed, I have no such plans at this time.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Immediate family members and in-laws, cases with which I was involved in private or governmental practice and financial interest in the affairs of a party before the court are examples of potential conflicts of interest. I would review these and all other actual and potential conflicts and address them in accordance with the Code of Conduct for United States Judges and applicable ethical canons.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would review all matters for actual and potential conflicts in accordance with all applicable codes of conduct and canons of ethics.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While at Duane Morris, I represented a state prison inmate in a federal lawsuit against the City of Philadelphia and secured for the inmate a default judgment and modest financial reward. I also participated in an adult literacy program. As the Attorney General of Pennsylvania, while I was precluded from representing private litigants, I participated in numerous community outreach initiatives, bar association sponsored programs, public education efforts and other projects designed to benefit the Commonwealth's citizens.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Senators Casey and Toomey have formed a bipartisan Judicial Nomination Advisory Panel in the Eastern District of Pennsylvania, which recommends candidates for nomination to the federal court, and I submitted a completed questionnaire on September 25, 2013. On November 19 and 20, as well as

December 16, 2013, I met with members of that Panel in Philadelphia, Pennsylvania. On November 22, 2013, I met with Senator Toomey in Conshohocken, Pennsylvania. On December 11, 2013, I met with Senator Casey in Washington, D.C. Since December 20, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 29, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 16, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Pappert, Gerald J.	2. Court or Organization U.S. District Court for the Eastern District of Pennsylvania	3. Date of Report 06/16/2014
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 06/16/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final Sb. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 06/12/2014
7. Chambers or Office Address Cozen O'Connor, P.C. 1900 Market Street Philadelphia, PA 19103		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1. Shareholder		Cozen O'Connor, P.C.
2. Chairman		Pennsylvania Banking and Securities Commission
3. General Partner		Marza, LP
4. Trustee		Trust No. 1
5.		

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1. 2001		Pennsylvania State Employees' Retirement System Defined Benefit Pension Plan
2.		
3.		

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Pappert, Gerald J.	06/16/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2012	Cephaion, Inc., 2011 Bonus	\$298,200.00
2. 2012	Cozen O'Connor, P.C., Salary	\$55,925.00
3. 2012	Commonwealth of Pennsylvania, Salary	\$4,531.00
4. 2012	Pennsylvania State Employees' Retirement System, Retirement Benefits	\$4,138.71
5. 2012	ABC, Inc., Fees	\$900.00
6. 2013	Cozen O'Connor, P.C., Salary	\$382,447.51
7. 2013	Commonwealth of Pennsylvania, Salary	\$30,302.84
8. 2013	ABC, Inc., Fees	\$750.00
9. 2014	Cozen O'Connor, Salary	\$96,837.20
10. 2014	Commonwealth of Pennsylvania, Salary	\$15,807.52

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amounts not required except for honoraria.)
☒ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)
☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				

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Name of Person Reporting	Date of Report
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2.	
3.	
4.	
5.	

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Name of Person Reporting	Date of Report
Pappert, Gerald J.	06/16/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

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Name of Person Reporting	Date of Report
Pappert, Gerald J.	06/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Marza, LP									
2. -Arizona State Bonds	A	Interest	K	T					
3. -Barclays Bank PLC	D	Dividend	M	T					
4. -Beaver County, PA Bonds	A	Interest	K	T					
5. -Buffalo, NY Bonds	A	Interest	K	T					
6. -Calamos Market Neutral Income Fund	D	Dividend	M	T					
7. -Dansville, NY Central School District Bonds	A	Interest	K	T					
8. -East Penn, PA School District Bonds	A	Interest	K	T					
9. -Elk County, PA Industrial Development Authority Bonds	B	Interest	N	T					
10. -American Funds EuroPacific Growth Fund	F	Dividend	N	T					
11. -Federal Farm Credit Banks Consolidated Bonds	A	Interest	K	T					
12. -Federal Home Loan Banks Consolidated Bonds	A	Interest	K	T					
13. -Spartan 500 Index Fund	D	Dividend	K	T					
14. -Fidelity Floating Rate High Income Fund	C	Dividend	N	T					
15. -Fidelity Municipal Money Market	A	Interest	L	T					
16. -First Trust Dow Jones Internet Index Fund	A	Dividend	M	T					
17. -Gates-Chili, NY Central School District Bonds	B	Interest	M	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 Q = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes: (See Column C2)					

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS — income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	Place "X" after each asset exempt from prior disclosure								
18. -Gateway Fund	D	Dividend	M	T					
19. -Greater Johnstown, PA School District Bonds	B	Interest	M	T					
20. -Greenfield, MA Bonds	A	Interest	M	T					
21. -Harbor Creek, PA School District Bonds	A	Interest	K	T					
22. -Highland LongShort Equity Fund	D	Dividend	M	T					
23. -iShares Core S&P 500 Index Fund	G	Dividend	P1	T					
24. -iShares Core Total U.S. Bond Market Fund	A	Dividend	J	T					
25. -iShares 1-3 Year Treasury Bond	A	Dividend	J	T					
26. -iShares Core S&P Mid-Cap	G	Dividend	N	T					
27. -iShares Russell 2000 Index Fund	F	Dividend	N	T					
28. -iShares U.S. Technology	E	Dividend	L	T					
29. -iShares Core S&P Small-Cap	E	Dividend	M	T					
30. -iShares S&P Europe 350	D	Dividend	K	T					
31. -JPMorgan Alerian MLP Index	E	Dividend	M	T					
32. -Janus Triton Fund	E	Dividend	M	T					
33. -MainStay Marketfield Fund	E	Dividend	M	T					
34. -Merger Fund	D	Dividend	N	T					

1. Income Gain Codes:
(See Columns B1 and D4)
2. Value Codes
(See Columns C1 and D3)
3. Value Method Codes
(See Column C2)
- A = \$1,000 or less
F = \$50,001 - \$100,000
J = \$15,001 or less
N = \$250,001 - \$500,000
P1 = \$25,000,001 - \$50,000,000
Q = Appraisal
U = Book Value
- B = \$1,001 - \$2,500
G = \$100,001 - \$1,000,000
K = \$15,001 - \$50,000
O = \$500,001 - \$1,000,000
R = Cost (Real Estate Only)
V = Other
- C = \$2,501 - \$5,000
H = \$1,000,001 - \$5,000,000
L = \$50,001 - \$100,000
P1 = \$1,000,001 - \$5,000,000
P4 = More than \$50,000,000
S = Assessment
W = Estimated
- D = \$5,001 - \$15,000
I1 = \$1,000,001 - \$5,000,000
I2 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000
T = Cash Market
- E = \$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Pappert, Gerald J.	06/16/2014

VII. INVESTMENTS and TRUSTS – Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "XY" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. -North & South Shenango, PA Jt. Municipal Authority Bonds	B	Interest	M	T					
36. -Pacira Pharmaceuticals, Inc.	D	Dividend	M	T					
37. -Panther Valley, PA School District Bonds	A	Interest	K	T					
38. -Phelps-Clifton Springs, NY Central School District Bonds	B	Interest	M	T					
39. -Pike County, KY School District Bonds	C	Interest	M	T					
40. -Ringwood, NJ Board of Education Bonds	C	Interest	M	T					
41. -Romeo, MI Community School District Bonds	A	Interest	M	T					
42. -Scout International Fund	F	Dividend	N	T					
43. -PA State Public School Building Authority Bonds	A	Interest	M	T					
44. -Stone Harbor, NJ Bonds	A	Interest	M	T					
45. -Swatara Twp., PA Bonds	A	Interest	M	T					
46. -Templeton Global Bond Fund	A	Dividend	M	T					
47. -University of Northern Iowa Bonds	A	Interest	K	T					
48. -Utah State Building Ownership Authority Bonds	C	Interest	M	T					
49. -Vanguard Total Stock Market Fund	E	Dividend	L	T					
50. -Wasatch Long/Short Fund	E	Dividend	L	T					
51. -American Funds Washington Mutual Investors Fund	G	Dividend	O	T					

1. Income/Gain Codes: (See Columns B1 and D4)
 2. Value Codes (See Columns C1 and D3)
 3. Value Method Codes (See Column C2)
- A = \$1,000 or less
 F = \$50,001 - \$100,000
 J = \$15,000 or less
 N = \$250,001 - \$500,000
 P1 = \$1,000,001 - \$50,000,000
 Q = Appraisal
 U = Book Value
- B = \$1,001 - \$2,500
 G = \$100,001 - \$1,000,000
 K = \$15,001 - \$50,000
 O = \$500,001 - \$1,000,000
 R = Cost (Real Estate Only)
 V = Other
- C = \$2,501 - \$5,000
 H1 = \$1,000,001 - \$5,000,000
 L = \$50,001 - \$100,000
 P1 = \$1,000,001 - \$5,000,000
 P4 = More than \$50,000,000
 S = Assessment
 W = Estimated
- D = \$5,001 - \$15,000
 I2 = More than \$5,000,000
 M = \$100,001 - \$250,000
 P2 = \$5,000,001 - \$25,000,000
 T = Cash Market
- E = \$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Pappert, Gerald J.	06/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. -Wells Fargo Premier Large Company Growth Fund	G	Dividend	N	T					
53. -Whitesboro, NY Central School District Bonds	A	Interest	M	T					
54. -Williamsport, PA Sanitary Authority Bonds	A	Interest	K	T					
55. BMW Bank of North America Utah CD	A	Interest	K	T					
56. Exxon Mobil Corp. Stock	E	Dividend	L	T					
57. Fidelity Cash Reserves	A	Interest	K	T					
58. GlaxoSmithKline Capital plc Note	A	Interest	K	T					
59. Intel Corp. Note	A	Interest	K	T					
60. IBM Corp. Note	A	Interest	K	T					
61. Merck & Co., Inc. Note	A	Interest	K	T					
62. PIMCO Total Return Fund	A	Dividend	K	T					
63. PIMCO Commodity Real Return Strategy Fund	A	Dividend	J	T					
64. URBAN STORAGE FUND	A	Distribution	M	W					
65. VILLAGE AT CANTERBURY	A	Distribution	M	W					
66. PNC BANK --Accounts	A	Interest	L	T					
67. PAC Life--Universal Life Policy		None	K	T					

1. Income Gain Codes: (See Columns B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I12 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and C3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

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Name of Person Reporting	Date of Report
Pappert, Gerald J.	06/16/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

Trust No. 1, listed in Section I of this Report, is an unfunded trust.

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Pappert, Gerald J.	06/16/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/* Gerald J. Pappert

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		49	071	Notes payable to banks-secured			
U.S. Government securities - see schedule		50	975	Notes payable to banks-unsecured			
Listed securities - see schedule	8	889	642	Notes payable to relatives			
Unlisted securities - see schedule		350	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		582	773
Real estate owned - personal residence		830	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000				
Cash value-life insurance		20	731				
Other assets itemize:							
Pennsylvania SERS pension plan		3	509				
				Total liabilities		582	773
				Net Worth	9	641	155
Total Assets	10	223	928	Total liabilities and net worth	10	223	928
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**U.S. Government Securities

Federal Farm Credit Banks Consolidated Bonds	\$ 25,826
Federal Home Loan Banks Consolidated Bonds	25,149
Total U.S. Government Securities	<u>\$ 50,975</u>

Listed Securities

American Funds EuroPacific Growth Fund	\$ 256,936
American Funds Washington Mutual Investors Fund	588,150
Arizona State bonds	25,211
Barclays Bank Plc	116,394
Beaver County, PA bonds	25,398
BMW Bank of North America Utah CD	25,112
Buffalo, NY bonds	25,843
Calamos Market Neutral Income Fund	123,367
Dansville, NY Central School District bonds	25,332
East Penn, PA School District bonds	25,387
Elk County, PA Industrial Development Authority bonds	116,275
Exxon Mobil Corp. stock	50,265
Fidelity Cash Reserves	22,920
Fidelity Floating Rate High Income Fund	264,179
Fidelity Municipal Money Market	74,188
First Trust Dow Jones Internet Index Fund	116,502
Gates Chili, NY Central School District bonds	129,054
Gateway Fund	175,659
GlaxoSmithKline Capital plc note	25,311
Greater Johnstown, PA School District bonds	127,270
Greenfield, MA bonds	102,451
Harbor Creek, PA School District bonds	25,392
Highland LongShort Equity Fund	129,413
IBM Corp. note	20,180
Intel Corp. note	20,586
iShares 1-3 Year Treasury Bond ETF	2,116
iShares Core S&P 500 Index ETF	2,034,666
iShares Core S&P Mid-Cap ETF	394,035
iShares Core S&P Small-Cap ETF	118,888
iShares Core Total U.S. Bond Market ETF	1,426
iShares Russell 2000 Index ETF	251,114
iShares S&P Europe 350 ETF	41,084
iShares U.S. Technology ETF	71,151
Janus Triton Fund	173,757
JPMorgan Alerian MLP Index ETN	132,908

MainStay Marketfield Fund	210,726
Merck & Co Inc. note	24,735
Merger Fund	273,158
North & South Shenango, PA Jt. Municipal Authority bonds	101,081
PA State Public School Building Authority bonds	155,298
Pacira Pharmaceuticals Inc. Com US	147,847
Panther Valley, PA School District bonds	25,732
Phelps-Clifton Springs, NY Central School District bonds	134,416
Pike County, KY School District bonds	130,811
PIMCO CommodityRealReturn Strategy Fund	7,282
PIMCO Total Return Fund	1,123
Ringwood, NJ Board of Education bonds	104,503
Romeo, MI Community School District bonds	126,995
Scout International Fund	319,962
Spartan 500 Index Fund	27,172
Stone Harbor, NJ bonds	100,646
Swatara Township, PA bonds	102,877
Templeton Global Bond Fund	166,971
University of Northern Iowa bonds	25,482
Utah State Building Ownership Authority bonds	103,486
Vanguard Total Stock Market ETF	82,154
Wasatch Long/Short Fund	97,855
Wells Fargo Premier Large Company Growth Fund	409,018
Whitesboro, NY Central School District bonds	126,980
Williamsport, PA Sanitary Authority bonds	25,412
Total Listed Securities	\$ 8,889,642

Unlisted Securities

Urban Storage Fund LP	\$ 200,000
Village at Canterbury LP	150,000
Total Unlisted Securities	\$350,000

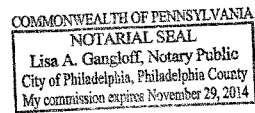
AFFIDAVIT

I, Gerald J. Pappert, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

June 18, 2014
(DATE)

Gerald Pappert
(NAME)

Lisa A. Gangloff
(NOTARY)



**Senator Grassley
Questions for the Record**

**Stephen R. Bough,
Nominee: U.S. District Judge for the Western District of Missouri**

1. During your hearing I asked you about some complaints you filed with the Federal Election Commission [FEC]. They dismissed all the complaints in your 93-page report. Mind you, for some of the allegations the Commission dismissed, they assumed for the sake of argument your allegations were accurate, and they still declined to pursue the matter. This was because the violations were technical or inadvertent. For instance, the candidate had failed to put a box around the “paid-for” designation at the bottom of billboards.
 - a. First, you did not disclose these complaints to the Committee with your Questionnaire. I am not suggesting you necessarily should have, although that argument could be made. But I would like to know if there are any other complaints of this nature that you have made. If so, please list them all.
 - b. In your 2012 complaint, you accused the candidate’s campaign of, among other things, “continually failing to report expenditures,” related to billboard advertising. The Commission noted that your complaint—including your attachments—provided “no basis for its allegations,” found that this allegation was “vague and speculative” and concluded that there was “no reason to believe” the campaign failed to report expenditures. Other than the *de minimus* material included in the appendix to the complaint, which the FEC concluded provided no basis for your allegation, upon what evidence did you base this allegation?
 - c. You also accused the candidate’s campaign of illegally coordinating communications with the political action committee Missouri Right to Life. The Commission noted that there was “no substantial similarity” between the two ads compared in your complaint and found that there was “no reason to believe” the campaign illegally coordinated communications. Other than the photograph of a Missouri Right to Life Ad and the print-out of the candidate’s campaign website you included with your complaint, which the FEC concluded was not “substantial[ly] similar,” upon what evidence did you base this allegation?
 - d. You also accused the candidate’s campaign of failing to “report a donation as an in-kind contribution” from an unnamed company or donors. The Commission concluded that the allegation was “speculative and unsupported” and found that there was “no reason to believe” the campaign failed to disclose contributions. Other than what was included in the appendix to the complaint, which the FEC concluded provided no support for the allegation, upon what evidence did you base this allegation?

- e. You also accused the candidate's campaign of improperly converting campaign funds to personal use by excessively reimbursing the candidate and his wife for campaign travel. The Commission concluded that this allegation was also "speculative and unsupported" and found that there was "no reason to believe" the campaign excessively reimbursed for campaign travel. Other than what was included in the appendix to the complaint, which the FEC found failed to support your allegation, upon what evidence did you base this allegation?
 - f. You also accused the candidate's campaign of failing to timely disclose a TV expenditure made on August 3, 2010. The Commission concluded that the evidence you supplied with your complaint "does not appear to support the claim" and found that there was "no reason to believe" the campaign failed to timely disclosure TV expenditures. Other than what was included in the appendix to the complaint, which the FEC found did not support the claim, upon what evidence did you base this allegation?
2. In 2008, you wrote the following,

"The right wing gets it—if you want to keep unconstitutional laws in force, you have to pack the Supreme Court." and

"President Bush has rewarded his most loyal supporters - the religious right wing - with appointments of justices that will erode civil liberties. Bush has rewarded his most loyal contributors - Chamber of Commerce folks - with justices who disregard consumers in favor of corporations."

What "unconstitutional laws" were you referring to when you wrote this post? Please list with specificity all of the laws you had in mind.
 3. I often ask nominees who have been involved in politics what kind of assurances they can give me that they will be fair and impartial to all the litigants who come before them, even those who represent issues or causes the nominee personally disagrees with. However, in your case, you have not only been active in Democratic politics, but you have written about Republicans at length, often utilizing rhetoric that is highly disparaging and unprofessional. In one of your least offensive blog posts you wrote, "to the religious right folks, come on over to the party that cares about the poor." If you were confirmed as a judge, what will you do to ensure that any Republican who comes before you will feel that they'll get a fair shake?
 4. I am also concerned about how you will treat those who have different views of religion than you do. For example you wrote, again criticizing the "religious right wing," "Seems like when the religious scholars were quizzing Jesus about the most important commandments, Jesus told them to 1) love your God; and 2) love your neighbor. How about a little love, food, clothing and healthcare for your neighbor?" You have written about how you believe religious people should act and what values they should promote. If

confirmed as a judge, how will you set aside these personal beliefs and treat all litigants fairly?

5. You wrote the following, "Let's elect a Democratic president so John Paul Stevens and Ruth Bader Ginsburg can retire so we can put on a couple of 50 year olds." You have frequently discussed how, in your view, Republicans put partisan judges on the Court who will pre-commit to certain outcomes on various topics of constitutional importance. When you wrote this statement, who did the "we" refer to?
6. In 2007, you wrote this regarding Missouri's 2004 vote enacting a state constitutional amendment prohibited same-sex marriages from being recognized in the state: "Missourians voted down gay marriage by over 70%. That vote broke my heart. I saved my 'No on 2' sign and look at it in my garage sadly." Given your prior statement on this issue, would you commit to recusing yourself from any cases involving same-sex marriage?
7. You have written that, "Women's issues will be defined by the Supreme Court as much as the next president." Please list what you see as "women's issues" that you expect the Supreme Court to "define."
8. You received the Jackson County Democratic Committee Harry S. Truman Democratic Achievement Award in 2013. Can you describe the work that you did in order to earn this award?
9. How would you describe your judicial philosophy, generally?
10. President Obama said that in deciding the "truly difficult" cases, judges need to apply "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . [and] the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?
11. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?
12. What is the most important attribute of a judge, and do you possess it?
13. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
14. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
15. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she

personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

- a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

² *Id.* 2689-2690.

³ *Id.* 2691.

to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"⁴

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court's opinion full force and effect?
- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"⁵
 - i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court's opinion full force and effect?
16. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
17. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
18. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
19. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.
20. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
21. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
22. If confirmed, how do you intend to manage your caseload?

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

23. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
24. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.
25. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees". You indicated that you have been a member of AAJ.
 - a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.
26. Please describe with particularity the process by which these questions were answered.
27. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record
Armando Bonilla**

Nominee, Judge for the U.S. Court of Federal Claims

1. Your Senate Questionnaire indicates that you have served the Department of Justice in a variety of capacities for twenty years. If confirmed, what lessons or principles have you learned from your experiences that you will take with you to the Court of Claims?
2. As an attorney for the Department of Justice it is your responsibility to zealously represent the United States. If confirmed, how do you plan to transition to neutrally presiding over cases?
3. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
4. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
5. What is the most important attribute of a judge, and do you possess it?
6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
7. If confirmed, how do you intend to manage your caseload?
8. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
9. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.
10. In your view, are there particular challenges facing the Court of Claims? Do you see any areas where improvement is needed?

**Senator Grassley
Questions for the Record**

**Wendy Beetlestone,
Nominee, U.S. District Judge for the Eastern District of Pennsylvania**

1. An important part of any district judge's work is presiding over criminal cases, and it does not appear that you have handled any criminal cases in your legal career. If confirmed, what steps will you take to familiarize yourself with criminal law before taking the bench?
2. What is the most important attribute of a judge, and do you possess it?
3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
4. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
8. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community," in determining the meaning of the Constitution? Please explain.
9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
10. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
11. If confirmed, how do you intend to manage your caseload?
12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

13. As a bankruptcy judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.
14. If confirmed, how do you believe your experience as a bankruptcy judge will help you as a federal district judge?
15. What do you anticipate will be the greatest challenge transitioning from a federal bankruptcy court's docket to a federal district court's docket?
16. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?
17. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
 - b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

² *Id.* 2689-2690.

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁵
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
18. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.
19. Please describe with particularity the process by which these questions were answered.
 20. Do these answers reflect your true and personal views?

**Senator Grassley
Questions for the Record**

**Mark A. Kearney,
Nominee, U.S. District Judge for the Eastern District of Pennsylvania**

1. You have served as a Complex Discovery Master and as a member of the Hearing Committee for the Pennsylvania Supreme Court Disciplinary Board. If confirmed, what have you learned from these experiences that will help you as a federal judge?
2. The majority of your practice has been in civil litigation.
 - a. Please describe your experience with criminal litigation.
 - b. If confirmed, what steps will you take to familiarize yourself with criminal law before taking the bench?
3. What is the most important attribute of a judge, and do you possess it?
4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
9. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.
10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
12. If confirmed, how do you intend to manage your caseload?
13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
15. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?
16. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
 - b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

² *Id.* 2689-2690.

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court's opinion full force and effect?
- c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."³
 - i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court's opinion full force and effect?
- d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"⁴
 - i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court's opinion full force and effect?
- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"⁵
 - i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court's opinion full force and effect?

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".
 - a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.
18. Please describe with particularity the process by which these questions were answered.
19. Do these answers reflect your true and personal views?

**Senator Grassley
Questions for the Record**

**Joseph F. Leeson,
Nominee, U.S. District Judge for the Eastern District of Pennsylvania**

1. As solicitor for the city of Bethlehem, you made public comments regarding a federal lawsuit filed against the city. What concerns me is that you referred to this suit as a “nuisance suit” filed by a “bounty hunter” seeking a cut of the take. Is this an accurate representation of your view of whistleblowers?
 - a. If not, what in your view is the role of whistleblowers?
 - b. If confirmed, how would you approach a *qui tam* case if it came before you?
2. You have been actively involved in local politics for many years. There is certainly nothing wrong with this activity, but should you be confirmed, your political history might concern future litigants.
 - a. Can you assure this Committee that, if confirmed, your decisions will remain grounded in the precedent and the text of the law rather than any underlying political ideology or motivation?
 - b. What further assurances or evidence can you give the committee and future litigants that you will be fair to all who appear before you, if confirmed?
3. What is the most important attribute of a judge, and do you possess it?
4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
9. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.
10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
12. If confirmed, how do you intend to manage your caseload?
13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
15. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?
16. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

- iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
- iv. Are you committed to upholding this precedent?
- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was

² *Id.* 2689-2690.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.”⁵

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.
- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.
18. Please describe with particularity the process by which these questions were answered.
19. Do these answers reflect your true and personal views?

⁵ *Id.* (internal citations omitted).

**Senator Grassley
Questions for the Record**

**Gerald Pappert,
Nominee: U.S. District Judge for the Eastern District of Pennsylvania**

1. You have served in a variety of legal settings, including as an associate and partner of various law firms, as Executive Vice President, General Counsel and Secretary of a corporation, and as First Deputy Attorney General and the Attorney General of the Commonwealth of Pennsylvania. How have these legal experiences helped prepare you for the federal bench?
2. Over the course of your career, you have been active in politics; and you have donated to candidates of both parties. Please provide answers to the following questions:
 - a. If confirmed, are you confident that you will be able to set aside your political views from how you would apply the law to the facts of any given case?
 - b. In your view, should political considerations influence judicial decision-making in any way, shape or form?
 - c. In your view, what are the differences in responsibility between an advocate and a judge?
3. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?
4. What is the most important attribute of a judge, and do you possess it?
5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
7. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

- a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."²
 - i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court's opinion full force and effect?
- c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."³
 - i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court's opinion full force and effect?
- d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"⁴
 - i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

² *Id.* 2689-2690.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

- ii. Will you commit to give this portion of the Court's opinion full force and effect?
- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"⁵
 - i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court's opinion full force and effect?
- 8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
- 9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
- 10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
- 11. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.
- 12. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
- 13. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
- 14. If confirmed, how do you intend to manage your caseload?
- 15. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
- 16. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

⁵ *Id.* (internal citations omitted).

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".
 - a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.
18. Please describe with particularity the process by which these questions were answered.
19. Do these answers reflect your true and personal views?

**Senator Charles Grassley
Supplemental Questions for the Record**

**Stephen R. Bough,
Nominee, United States District Judge for the
Western District of Missouri**

A member of the Missouri Bar recently drew my attention to your participation in *Marcus Champion, et al. v. High-Tech Institute, Inc.*, Case No. 4:11-CV-00506-SOW (W.D. Mo.), a case originally assigned to your former employer, Senior United States District Judge Scott O. Wright. Prior to your appearance in the case, plaintiffs' counsel moved the court on April 24, 2013, to transfer the case to another judge. Senior Judge Wright denied that motion within a few hours. One week later, on May 1, 2013 – nearly two years after plaintiffs filed their complaint – you entered an appearance. The next day, on May 2, 2013, Senior Judge Wright issued a perfunctory order recusing himself and transferring the case to another judge for further proceedings. Your entry of appearance was apparently the reason for Senior Judge Wright's *sua sponte* recusal. According to the court's electronic docket, you made no filings in the case until you noticed your withdrawal on December 9, 2013.

As you are no doubt aware, Missouri Rule of Professional Conduct 4-3.1 forbids you from filing frivolous motions or otherwise acting in bad faith. Put otherwise, it imposes upon you "a duty not to abuse legal procedure." Mo. R. Prof. Conduct 4-3.1, Comment 1.

One such abuse of legal procedure is a litigation gambit known as "judge shopping:" when an attorney having a preexisting relationship with a judge creates a conflict by noticing an appearance in a case "solely or primarily for the purpose of disqualifying the judge." *McCuin v. Texas Power & Light Co.*, 714 F.2d 1255, 1264 (5th Cir. 1983). This practice, widely criticized by federal and state courts, "creates the impression that, for a fee, the lawyer is available for sheer manipulation of the judicial system" and "brings the judicial system itself into disrepute." *Id.* at 1265. See *United States v. Phillips*, 59 F. Supp. 2d 1178, 1180 (D. Utah 1999) (judge shopping "invite[s] public skepticism of the ability to receive justice in our court system" and "is universally condemned by the courts") (citation omitted); *Grievance Administrator v. Fried*, 570 N.W.2d 262, 267 (Mich. 1997) (judge shopping "is prejudicial to the administration of justice" and "surely exposes the legal profession and the courts to contempt and ridicule"). The Michigan Supreme Court has concisely summarized how courts throughout the country view judge shopping: it "is contrary to justice, ethics, honesty, and good morals. It is wrong." *Fried*, 570 N.W.2d at 267. It is grounds for professional discipline as well. See, e.g., *id.* at 268.

With these preliminary observations in mind, please answer the following supplemental questions for the record related to your participation in *Champion*.

1. Please explain why you noticed your appearance in *Champion* on plaintiffs' behalf. Include in your answer the name and contact information of any person who requested that you represent plaintiffs or approached you about appearing on plaintiffs' behalf.
2. At the time of your appearance in *Champion*, what was the nature of your relationship with Senior Judge Wright? Following your clerkship, did you maintain personal contact with him?
3. Please describe with particularity all legal work you performed on plaintiffs' behalf between your entry of appearance on May 2, 2013, and your withdrawal on December 9, 2013. Please provide all documentation supporting your response, including billing records appropriately redacted to omit any information protected by the attorney-client privilege, that substantiate the nature and amount of work done and any filings you made with the court during that time period.
4. Please explain why you noticed your withdrawal from *Champion* prior to resolution of the case.
5. Prior to noticing your appearance in *Champion*, did you consult any caselaw or ethics rules relevant to the creation of a conflict with a judge intended to occasion the judge's recusal? If so, please cite the precedents, rules, or other materials you consulted.
6. Have you appeared in any other cases before Senior Judge Wright in which you were Counsel of Record at the inception of the matter? If so, please provide the caption and case number for each such case.
7. Have you every joined as Counsel of Record in an ongoing lawsuit that was pending before Senior Judge Wright? If so, please provide the caption and case number for each such case.

Senator Charles Grassley
Second Set of Supplemental Questions for the Record

Stephen R. Bough
Nominee, United States District Judge for the
Western District of Missouri

Please respond to the following Second Set of Supplemental Questions for the Record, which addresses answers you provided to Senator Grassley's Supplement Questions for the Record on November 10, 2014.

1. In response to Supplemental Question for the Record No. 3, you stated that you are unable "to provide additional documentation due to the attorney-client privilege." The question specifically anticipated that some responsive documents could be, in part, subject to the privilege and asked you to provide redacted versions of all responsive documents. Accordingly, I repeat my initial request that you provide all documentation – including but not limited to billing records, email communications, and legal memoranda –supporting your response to Supplemental Question No. 3, redacted appropriately to protect any privileged material.
2. Please describe with specificity any court proceedings related to the *Champion* matter that you attend either telephonically or in person, including, but not limited to, depositions, status hearings, motions hearing, and settlement negotiations. Please include with your response the date on which the proceeding occurred.
3. Please provide the caption and case number of all matters that were assigned, or are currently assigned, to Senior Judge Wright in which you noticed an appearance since January 1, 2006.

Questions for the Record
Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Questions for the Record
Submitted by Senator Al Franken

Joseph F. Leeson
Nominee, United States District Judge for the Eastern District of Pennsylvania

U.S. Senate Committee on the Judiciary
July 31, 2014

1. On June 27, 2012, you participated in the “Let Religious Freedom Ring” forum at Notre Dame Church in Bethlehem, Pennsylvania. In your questionnaire, you stated that you have no notes, transcripts or recordings of this forum, but you did provide press coverage of the event. This coverage, from a July 12, 2012 article in *The A.D. Times*, quotes you as saying that the health care law is “un-American, unprecedented and blatantly unconstitutional.” The article goes on to say that you mentioned lawsuits filed against the health care law across the country, including suits filed in the Dioceses of Pittsburgh and Erie, Pennsylvania. And then the article reports that you “explained [that] the mandate violated the First Amendment, the Administrative Procedure Act, and the Religious Freedom Restoration Act.”
 - a. It appears from this press coverage that these comments were made about the requirement that employers provide health insurance coverage for preventive health services, including contraception, to their employees, and not the individual mandate requiring people to purchase health insurance. During your hearing, Ranking Member Grassley asked you which of the exact elements of the health care law you were referring to in these comments. You responded that you were discussing “the Act overall” and that there was “a specific discussion on the mandate as well.” Please explain more specifically which provisions of law you were referring to when you made each of the comments noted above.
 - b. In response to a question from Ranking Member Grassley about the statements you made at the June 27, 2012 forum, you said at your hearing:

I was asked by one of my clients, the Catholic Diocese of Allentown, to represent it at this forum on the subject of the First Amendment and religious liberty. That was the context in which I was representing the client and made those remarks.

In your questionnaire, you state that you participated in this June 27, 2012 forum, but do not mention that you participated as an attorney representing a client. The press coverage of this event also simply states that you “provided the commentary at the Notre Dame session.”

Please describe with specificity in what capacity you provided these comments and any relevant attorney-client relationship you may have had at the time with the Catholic Diocese of Allentown.

- c. Do these comments reflect your view of the law at the time you made these comments? Do you continue to hold these views today?
 - d. Do your comments reflect your view, then or now, of the requirement that employers cover contraceptive services as it applies to a particular employer or type of employer, or were you referring to the contraceptive requirement as applied to all employers?
 - e. Will these past comments, whether they reflect your past or current views, have any effect on your ability to serve as an impartial judge?
 - f. If the U.S. Court of Appeals for the Third Circuit's decision in *Conestoga Wood v. Burwell*, 724 F.3d 377 (3d Cir. 2013) had remained binding precedent, would you have had any trouble following this decision?
2. On June 30, 2014, the Supreme Court held in *Burwell v. Hobby Lobby* that closely held for-profit corporations can refuse to provide health insurance coverage of a woman's contraceptive services. The opinion of the Court assumed without deciding that the government has a compelling interest in providing contraceptive services to women. In his concurrence, Justice Kennedy states that the contraceptive coverage requirement "furthers a legitimate and compelling interest in the health of female employees." And in her dissent, Justice Ginsburg, joined by Justices Sotomayor, Breyer, and Kagan, also concludes that the contraceptive coverage requirement "furthers compelling interests in public health and women's well being."
- a. In your view, does the government have a compelling interest in ensuring that women receive contraceptive care?
 - b. As a judge, would you be able to follow binding precedent holding that the government has a compelling interest in requiring that group health plans provide contraceptive coverage without cost sharing notwithstanding your personal views on the matter?
3. At the June 27, 2012 forum, the press coverage states that you "encouraged everyone to . . . vote their conscience." Judges sometimes have to make difficult decisions to uphold the law even when they personally disagree with the law or the outcome that could result from applying the law. How will you handle cases where the law conflicts with your conscience or personal beliefs?

Written Questions from Senator Dianne Feinstein for Joseph F. Leeson, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania

1. The Supreme Court reiterated in *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007): “Before viability, a State ‘may not prohibit any woman from making the ultimate decision to terminate her pregnancy.’ It also may not impose upon this right an undue burden, which exists if a regulation’s ‘purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.’” (quoting *Planned Parenthood Casey*, 505 U.S. 833, 878-79 (1992) (internal citations omitted)).

Thus, the Ninth Circuit has held that Arizona may not “prohibit abortion beginning at twenty weeks gestation, before the fetus is viable.” *Isaacson v. Horne*, 716 F.3d 1213, 1217 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 905 (2014). Concurring, conservative Judge Andrew Kleinfeld wrote: “The question for us is whether the current state of constitutional law prohibits the states from imposing that restriction. It does.” *Id.* at 1233 (Kleinfeld, J., concurring).

Will you faithfully apply the Supreme Court’s precedent on the issue of a woman’s right to choose, including the rule that any law the “purpose or effect [of which] is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability” is unconstitutional?

2. I would like to ask you some questions about some of your remarks from 2012, which I found very troubling.

An article from 2012 quotes you as stating: “The HHS mandate is ‘un-American, unprecedented and blatantly unconstitutional.’” The article also states: “[A]s Leeson explained, the mandate violated the First Amendment, the Administrative Procedure Act and the Religious Freedom Restoration Act, a federal law.”

In response to a written question from Senator Franken about these remarks, you stated: “I was referring to the requirement that employers provide to their employees health insurance coverage for preventive health services, specifically the contraception coverage requirement.”

- a. As a strong supporter of the Women’s Health Amendment to the Affordable Care Act, I am gratified that, at your hearing, you acknowledged that your use of the word “un-American” was inappropriate.

Will you commit to showing an appropriate judicial temperament in which all parties who come before you are treated with respect and dignity, if you are confirmed?

- b. In your responses to Senator Franken's questions, you state that five justices of the Supreme Court in the recent *Hobby Lobby* decision "suggested that the government has a compelling interest in the contraceptive coverage requirement."

Coverage for contraceptives can be critically important for women not only in the area of family planning, but also for critical health reasons.

Can you assure me that, if you are ever confronted with a case in which the necessity of contraception or contraceptive coverage is an issue, that you will take the time to understand the medical importance of contraception for women?

- c. You state in your written responses to Senator Franken: "I provided the comments in my capacity as an attorney representing one of my clients, the Catholic Diocese of Allentown, which has been a client of mine for approximately two decades and remains a client today."
- i. Have you ever handled a case for this client, or any other client, challenging the validity of the requirement of the Affordable Care Act to which you were referring in your remarks, or any other provision of the Affordable Care Act? If so, please provide specifics of those cases.
 - ii. You state in your responses to Senator Franken that your remarks "reflected my client's view of the law at the time I made them on June 27, 2012."
 1. Please describe the process by which you arrived at the view about the contraceptive requirement that you expressed in these remarks.

For example, did you evaluate the importance of contraception for women's health, and how did you do so? Did you review pertinent statutes, regulations, Supreme Court precedent, and Third Circuit precedent?
 2. Did you make clear in your remarks at the time that your comments were given as an attorney on behalf of a client, and not as your personal views?
- d. The recusal statute, 28 U.S.C. § 455, provides in pertinent part that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

You have publicly stated that the legal requirement to which you were referring in your remarks is "unprecedented and blatantly unconstitutional." If any challenge to that requirement (or any regulations applying that requirement) were to before you if you are confirmed, would you recuse yourself from the case?

Senator Grassley
Questions for the Record

Stephen R. Bough,
Nominee: U.S. District Judge for the Western District of Missouri

1. During your hearing I asked you about some complaints you filed with the Federal Election Commission [FEC]. They dismissed all the complaints in your 93-page report. Mind you, for some of the allegations the Commission dismissed, they assumed for the sake of argument your allegations were accurate, and they still declined to pursue the matter. This was because the violations were technical or inadvertent. For instance, the candidate had failed to put a box around the “paid-for” designation at the bottom of billboards.

- a. First, you did not disclose these complaints to the Committee with your Questionnaire. I am not suggesting you necessarily should have, although that argument could be made. But I would like to know if there are any other complaints of this nature that you have made. If so, please list them all.

Response: I have made no other complaints of this nature.

- b. In your 2012 complaint, you accused the candidate’s campaign of, among other things, “continually failing to report expenditures,” related to billboard advertising. The Commission noted that your complaint—including your attachments—provided “no basis for its allegations,” found that this allegation was “vague and speculative” and concluded that there was “no reason to believe” the campaign failed to report expenditures. Other than the *de minimus* material included in the appendix to the complaint, which the FEC concluded provided no basis for your allegation, upon what evidence did you base this allegation?

Response: At the time I filed this complaint I believed I had a good faith basis for all the allegations and my report contained all of the evidence for the basis of the claim. I fully accept the FEC resolution of the issue.

- c. You also accused the candidate’s campaign of illegally coordinating communications with the political action committee Missouri Right to Life. The Commission noted that there was “no substantial similarity” between the two ads compared in your complaint and found that there was “no reason to believe” the campaign illegally coordinated communications. Other than the photograph of a Missouri Right to Life Ad and the print-out of the candidate’s campaign website you included with your complaint, which the FEC concluded was not “substantial[ly] similar,” upon what evidence did you base this allegation?

Response: The report contained all of the evidence for the basis of the claim.

- d. You also accused the candidate's campaign of failing to "report a donation as an in-kind contribution" from an unnamed company or donors. The Commission concluded that the allegation was "speculative and unsupported" and found that there was "no reason to believe" the campaign failed to disclose contributions. Other than what was included in the appendix to the complaint, which the FEC concluded provided no support for the allegation, upon what evidence did you base this allegation?

Response: The report contained all of the evidence for the basis of the claim.

- e. You also accused the candidate's campaign of improperly converting campaign funds to personal use by excessively reimbursing the candidate and his wife for campaign travel. The Commission concluded that this allegation was also "speculative and unsupported" and found that there was "no reason to believe" the campaign excessively reimbursed for campaign travel. Other than what was included in the appendix to the complaint, which the FEC found failed to support your allegation, upon what evidence did you base this allegation?

Response: The report contained all of the evidence for the basis of the claim.

- f. You also accused the candidate's campaign of failing to timely disclose a TV expenditure made on August 3, 2010. The Commission concluded that the evidence you supplied with your complaint "does not appear to support the claim" and found that there was "no reason to believe" the campaign failed to timely disclosure TV expenditures. Other than what was included in the appendix to the complaint, which the FEC found did not support the claim, upon what evidence did you base this allegation?

Response: The report contained all of the evidence for the basis of the claim.

2. In 2008, you wrote the following,

"The right wing gets it—if you want to keep unconstitutional laws in force, you have to pack the Supreme Court." and

"President Bush has rewarded his most loyal supporters - the religious right wing - with appointments of justices that will erode civil liberties. Bush has rewarded his most loyal contributors - Chamber of Commerce folks - with justices who disregard consumers in favor of corporations."

What "unconstitutional laws" were you referring to when you wrote this post? Please list with specificity all of the laws you had in mind.

Response: I made these comments several years ago in my personal capacity in conjunction with my affiliation with the Committee for County Progress. Comments made in that capacity would have no bearing on my role as a judge if I am confirmed. I had no particular laws in mind.

In the course of completing the Senate Judiciary Questionnaire, I have reviewed some of my past political statements and realized that some of them, particularly on blogs, were overly harsh. I want to take this opportunity to apologize for them. If I am given the honor of serving as a federal judge, my tone and temperament will always represent the dignity of the office. I assure you and the entire Senate that if allowed to serve as a judge I will never be motivated by a political ideology. There is no place for politics or personal views on the bench. I fully recognize the role of a judge is dramatically different than that of an advocate for a client or an official in a political party, and I'm committed to being a fair and neutral judge.

3. **I often ask nominees who have been involved in politics what kind of assurances they can give me that they will be fair and impartial to all the litigants who come before them, even those who represent issues or causes the nominee personally disagrees with. However, in your case, you have not only been active in Democratic politics, but you have written about Republicans at length, often utilizing rhetoric that is highly disparaging and unprofessional. In one of your least offensive blog posts you wrote, "to the religious right folks, come on over to the party that cares about the poor." If you were confirmed as a judge, what will you do to ensure that any Republican who comes before you will feel that they'll get a fair shake?**

Response: I give you and the entire Senate my personal assurance to treat all individuals with respect, fairness and impartiality. Additionally, I want to reassure you that the comments – the tone of which I regret – do not actually reflect my ability to work with individuals regardless of their party affiliation. For example, in my professional work capacity I have represented clients without regard for their political views. I have worked with other lawyers as co-counsel on many cases without regard to their political views. I have hired my law firm colleagues without regard to their political views. If I am fortunate enough to be confirmed, I will ensure that politics never play a role in any judicial decision making and that every person, regardless of political affiliation, gets a fair shake.

4. **I am also concerned about how you will treat those who have different views of religion than you do. For example you wrote, again criticizing the "religious right wing," "Seems like when the religious scholars were quizzing Jesus about the most important commandments, Jesus told them to 1) love your God; and 2) love your neighbor. How about a little love, food, clothing and healthcare for your neighbor?" You have written about how you believe religious people should act and what values they should promote. If confirmed as a judge, how will you set aside these personal beliefs and treat all litigants fairly?**

Response: I made these comments several years ago in my personal capacity in conjunction with my affiliation with the Committee for County Progress. Comments made in that capacity would have no bearing on my role as a judge if I am confirmed.

Additionally my personal religious views have never affected my legal representation of clients and those views will not affect my role as a judge, if I have the privilege of serving. I give you and the entire Senate my personal assurance to treat all individuals with respect, fairness and impartiality. In my professional work capacity I have represented individuals from a variety of different faiths, in addition to those with no religious faith. If I have the opportunity to serve as a trial judge, I will work on a daily basis to ensure that my own religious views never play a role in any judicial decision making.

5. **You wrote the following, “Let's elect a Democratic president so John Paul Stevens and Ruth Bader Ginsburg can retire so we can put on a couple of 50 year olds.” You have frequently discussed how, in your view, Republicans put partisan judges on the Court who will pre-commit to certain outcomes on various topics of constitutional importance. When you wrote this statement, who did the “we” refer to?**

Response: I made these comments several years ago in my personal capacity in conjunction with my affiliation with the Committee for County Progress. Comments made in that capacity would have no bearing on my role as a judge if I am confirmed and the statements were directed to members of that political organization.

6. **In 2007, you wrote this regarding Missouri’s 2004 vote enacting a state constitutional amendment prohibited same-sex marriages from being recognized in the state: “Missourians voted down gay marriage by over 70%. That vote broke my heart. I saved my ‘No on 2’ sign and look at it in my garage sadly.” Given your prior statement on this issue, would you commit to recusing yourself from any cases involving same-sex marriage?**

Response: If I am fortunate enough to be confirmed, I would closely follow the Code of Conduct for United States Judges, as well as 28 U.S.C. § 455, which requires a judge to disqualify him or herself “in any proceeding in which his impartiality might reasonably be questioned.”

7. **You have written that, “Women’s issues will be defined by the Supreme Court as much as the next president.” Please list what you see as “women’s issues” that you expect the Supreme Court to “define.”**

Response: I made these comments several years ago in my personal capacity in conjunction with my affiliation with the Committee for County Progress. Comments made in that capacity would have no bearing on my role as a judge if I am confirmed. The “women’s issues” referenced in that statement would include sex discrimination and fair pay.

8. **You received the Jackson County Democratic Committee Harry S. Truman Democratic Achievement Award in 2013. Can you describe the work that you did in order to earn this award?**

Response: The award that I received states that it was given “in recognition of your dedication, commitment and outstanding contribution to the Democratic Party” and was given the year after I concluded my service as the Chairman of the Jackson County Democratic Committee.

9. How would you describe your judicial philosophy, generally?

Response: I do not have any particular judicial philosophy. In addition to believing that our justice system requires that judges always follow precedent, I believe that every case should be handled in a just and speedy manner with sensitivity to the cost that litigation can impose on both sides of a dispute. I also believe that judges should be neutral umpires in the litigation process. Having served as a law clerk for a United States District Judge, I was able to witness the qualities of a great trial judge. Those qualities include hard work, following the rules, being available to the attorneys to resolve disputes, listening calmly to arguments and acting fairly and impartially.

10. President Obama said that in deciding the “truly difficult” cases, judges need to apply “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . [and] the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?

Response: I have not researched the full context of that quote and I am unable to agree or comment on the quote. If I am fortunate enough to be confirmed I believe that a trial judge should apply case precedent to decide all cases.

11. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?

Response: The best qualities that I have seen, and that I would seek to emulate, are to work hard, study the relevant case law, come to hearings prepared, calmly listen to arguments and promptly decide only those issues before the judge. To the extent that any judge does not perform those duties or treats parties to the case disrespectfully, I would want to avoid that behavior.

12. What is the most important attribute of a judge, and do you possess it?

Response: Fairness and impartiality are two of the most important attributes. I believe I possess both.

13. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A trial judge should always be patient, dignified, respectful and courteous to all individuals who appear in front of the Court. I believe I have exhibited each of

those qualities in my service as an attorney and will continue to do so if I have the honor of being confirmed as a trial judge.

14. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I am committed to following binding precedent, regardless of any personal beliefs. A stable and orderly society is premised upon the rule of law, which requires a firm application of precedent.

15. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

- a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹**

- i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Response: I do believe that the statement is part of the Court's holding.

- ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

Response: In *Windsor*, Justice Kennedy's use of the term "lawful marriages" refers to "marriages made lawful by the State." 133 S. Ct. 2675, 2695 (2013).

- iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes. *See Windsor*, 133 S. Ct. at 2695 ("The class to which DOMA directs its restrictions and restraints are those persons who are joined in same-sex marriages made lawful by the State. . . . The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to

¹ *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

protect in personhood and dignity. . . . This opinion and its holding are confined to those lawful marriages.”).

iv. Are you committed to upholding this precedent?

Response: Yes. If I have the opportunity to serve as a trial judge, I will follow *Windsor* and any other relevant precedent from the Supreme Court and the Eighth Circuit.

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes, along with all other portions of the *Windsor* majority opinion.

c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes, along with all other portions of the *Windsor* majority opinion.

d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with

² *Id.* 2689-2690.

³ *Id.* 2691.

respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"⁴

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes, along with all other portions of the *Windsor* majority opinion.

- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"⁵

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes, along with all other portions of the *Windsor* majority opinion.

16. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In the absence of controlling precedent from the United States Supreme Court or the Eighth Circuit Court of Appeals, I would follow accepted principles of statutory construction as defined by the Supreme Court. This would include examining the plain meaning of the constitutional provision, statute or regulation. If that language is clear and unambiguous, I would apply the plain meaning of the language to the facts. If the language is unclear or ambiguous, I would apply other canons of statutory construction to ascertain its meaning, then consider any precedent interpreting analogous provisions and then consult the decisions from the other circuit courts as persuasive authority.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

- 17. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: It is a trial judge's duty to always follow the precedent of the United States Supreme Court and the Court of Appeals, regardless of personal views. If I am fortunate enough to be confirmed, I would always apply binding precedent.

- 18. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes enacted by Congress have the presumption of constitutionality. When reviewing a statute enacted by Congress, courts should avoid constitutional issues, if possible, and endeavor to interpret the statute in a manner that upholds its constitutionality. If the court must address the constitutional issue, it should strike down a statute only if it is clearly shown that Congress has exceeded its authority under the Constitution or acted contrary to a provision of the Constitution.

- 19. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No. The Constitution is an American document and trial judges should follow the Constitution and the precedent of the United States Supreme Court and the relevant Court of Appeals.

- 20. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: Throughout my career I have represented individuals of all political stripes. When representing clients I simply seek a judge who will follow precedent and carefully consider my client's arguments, not a judge who might base his or her decision on any political ideology. I give you and the entire Senate my personal assurance that I would strictly adhere to the precedent of the United States Supreme Court and the Eighth Circuit Court of Appeals if I have the honor of serving as a trial judge.

- 21. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: In my professional capacity as a lawyer I have represented clients and worked with many lawyers without regard to their personal views. On a daily basis I advise clients on the status of the law, the need for precedent to maintain order in our society and how to abide by the law. Personal views are irrelevant to the bench. All parties deserve a fair and impartial judge.

22. If confirmed, how do you intend to manage your caseload?

Response: I plan to be an active participant in the management of the caseload. I believe that in-person case management conferences at the beginning of a case are essential to ensuring a speedy determination of any case. Through the setting of deadlines and establishing a firm trial date, the parties are then able to proceed in an orderly manner throughout the case. If I have the honor of being confirmed, I would make myself available to hear oral arguments and would promptly decide all motions, including dispositive motions.

23. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. I plan to be an active participant in the management of the caseload. I believe that in-person case management conferences at the beginning of a case are essential to ensuring a speedy determination of any case. Through the setting of deadlines and establishing a firm trial date, the parties are then able to proceed in an orderly manner throughout the case. If I have the honor of being confirmed, I would make myself available to hear oral arguments and would promptly decide all motions, including dispositive motions. I would also make use of the case management software located within the Electronic Case Filing (ECF) software, will work to make efficient use of the magistrate judges and work collaboratively with the Mediation Assessment Program.

24. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: If I have the opportunity to serve as a trial judge, I would apply many of the same principles I witnessed as a law clerk to a federal district court judge. That process included closely reading the briefs, reading the cases cited by the parties, conducting independent research for binding precedent, consulting on occasion with fellow district court judges and listening carefully to oral argument by the attorneys.

25. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees". You indicated that you have been a member of AAJ.

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

26. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on July 31, 2014. I prepared my responses over the next week and submitted them to the Department of Justice Office of Legal Policy for review. I then finalized my responses and authorized the transmittal to the Judiciary Committee.

27. Do these answers reflect your true and personal views?

Response: Yes.

Senator Charles Grassley
Supplemental Questions for the Record

Stephen R. Bough
Nominee, United States District Judge for the
Western District of Missouri

A member of the Missouri Bar recently drew my attention to your participation in *Marcus Champion, et al. v. High-Tech Institute, Inc.*, Case No. 4:11-CV-00506-SOW (W.D. Mo.), a case originally assigned to your former employer, Senior United States District Judge Scott O. Wright. Prior to your appearance in the case, plaintiffs' counsel moved the court on April 24, 2013, to transfer the case to another judge. Senior Judge Wright denied that motion with a few hours. One week later, on May 1, 2013 – nearly two years after plaintiffs filed their complaint – you entered an appearance. The next day, on May 2, 2013, Senior Judge Wright issued a perfunctory order recusing himself and transferring the case to another judge for further proceedings. Your entry of appearance was apparently the reason for Senior Judge Wright's *sua sponte* recusal. According to the court's electronic dockets, you made no filings in the case until you noticed your withdrawal on December 9, 2013.

As you are no doubt aware, Missouri Rule of Professional Conduct 4-3.1 forbids you from filing frivolous motions or otherwise acting in bad faith. Put otherwise, it imposes upon you “a duty not to abuse legal procedure.” Mo. R. Prof. Conduct 4-3.1, Comment 1.

One such abuse of legal procedure is a litigation gambit known as “judge shopping:” when an attorney having a preexisting relationship with a judge creates a conflict by noticing an appearance in a case “solely or primarily for the purpose of disqualifying the judge.” *McCuin v. Texas Power & Light Co.*, 714 F.2d 1255, 1264 (5th Cir. 1983). This practice, widely criticized by federal and state courts, “creates the impression that, for a fee, the lawyer is available for sheer manipulation of the judicial system” and “brings the judicial system itself in disrepute.” *Id.* at 1265. *See United States v. Phillips*, 59 F.Supp. 2d 1178, 1180 (D. Utah 1999) (judge shopping “invite[s] public skepticism of the ability to receive justice in our court system” and “is universally condemned by the courts”) (citation omitted); *Grievance Administrator v. Fried*, 570 N.W.2d 262, 267 (Mich. 1977) (judge shopping “is prejudicial to the administration of justice” and “surely exposes the legal profession and the courts to contempt and ridicule”). The Michigan Supreme Court has concisely summarized how courts throughout the country view judge shopping: it “is contrary to justice, ethics, honesty, and good morals. It is wrong.” *Fried*, 570 N.W.2d at 267. It is grounds for professional discipline as well. *See, e.g., id.* at 268.

With these preliminary observations in mind, please answer the following supplemental questions for the record related to your participation in *Champion*.

1. **Please explain why you noticed your appearance in *Champion* on plaintiffs' behalf. Include in your answer the name and contact information of any person who requested that you represent plaintiffs or approached you about appearing on plaintiffs' behalf.**

Response: In March 2013, one of the lead trial counsel for the plaintiffs in the *Champion* case left his firm and withdrew as counsel. At that point, Mr. Gene Graham, the lead trial counsel, contacted me about becoming co-trial counsel. I have had a decade long professional relationship with Mr. Graham and I was asked to serve as co-trial counsel, as well as to advise on strategy and federal procedure.

I would like to emphasize that the decision to enter my appearance in the *Champion* case was made on factors entirely irrelevant to the judge to which the case was assigned. At the time of my entry of appearance, Judge Wright was assigned to the case but due to his declining health he was no longer handling jury trials and the parties understood that the case would need to be reassigned to a judge who would ultimately set a trial date. The decision to enter my appearance was based on my professional relationship with plaintiffs' counsel, the merits of the case, the fact that other plaintiff counsel had recently withdrawn from the *Champion* case and the need for experienced trial counsel.

Gene Graham
White, Graham, Buckley & Carr
19049 E. Valley View Parkway, Suite C
Independence, MO 64055

2. **At the time of your appearance in *Champion*, what was the nature of your relationship with Senior Judge Wright? Following your clerkship, did you maintain personal contact with him?**

Response: After Judge Wright's law clerks completed their clerkships it was his policy to include them on his conflicts list – meaning that he would not be assigned to any matter they were involved in – for two years. This same policy was followed for me. After those two years I would occasionally have cases in front of him. In the mid-2000's, as Judge Wright grew older, I began spending more time with him – we would go to lunch frequently and I would help organize law clerk events and important birthdays. Because of this closer personal relationship, in approximately 2006, Judge Wright added me to his conflicts list to ensure that there would never be an appearance of impropriety under Canon 2 of the Code of Conduct for United States Judges.

3. **Please describe with particularity all legal work you performed on plaintiffs' behalf between your entry of appearance on May 2, 2013, and your withdrawal on December 9, 2013. Please provide all documentation supporting your response, including billing records, appropriately redacted to omit any information protected by the attorney-client privilege, that substantiate the nature and amount of work done and any filings you made with the court during that time period.**

Response: Almost 99% of my work is on a contingent fee agreement and I never bill or record hours on such cases, including this one. Based on a review of emails, my calendar

and my case file I am able to list the following activities with particularity, but I am not able to provide additional documentation due to the attorney-client privilege. I also engaged in numerous phone conversations regarding decisions to file motions, decisions to not oppose certain defense motions and the content of the plaintiff's motions and responses, but I do not have a specific record of such calls.

5/02/2013	Review email and attachments from defense counsel and court documents
5/06/2013	Receipt and review of amended deposition notice of Sandra Jones
5/06/2013	Receipt and review of deposition notice of Faith Perdue
5/07/2013	Review joint motion to amend/correct 5 th Amended Scheduling Order
5/07/2013	Review plaintiff's unopposed motion for extension of time
5/10/2013	Receipt and review of amended deposition notice of Faith Perdue
5/12/2013	Receipt and review of amended deposition notice of Faith Perdue
5/13/2013	Review notice of hearing, contact plaintiff counsel regarding my unavailability
5/16/2013	Receipt and review of amended deposition notice of Sandra Jones
5/22/2013	Review scheduling order setting trial for 1/27/2014 and order granting plaintiff's motion for extension
5/27/2013	Receipt and review of deposition notice of Chuck Torres and Marilyn Knight
6/07/2013	Receipt and review of amended deposition notice of Erin Reed and Chuck Torres
6/11/2013	Receipt and review of amended deposition notice of Marilyn Knight and notice of intent to serve document subpoenas
6/13/2013	Receipt and review of amended deposition notice of Marilyn Knight
6/14/2013	Receipt and review of notice of filing of intent to serve document subpoenas
6/15/2013	Review three emails between defense and plaintiff counsel regarding confidential documents
6/17/2013	Receipt and review of third notice to take deposition of Marilyn Knight
6/20/2013	Review email, ECF filing and notice of videotaped deposition of Terrie Payne
6/24/2013	Review email and defendant documents DEF-AND-EMP000818-855

6/25/2013	Receipt and review of affidavit of service to SEMO, Truman State, William Jewel College, Avila University, Rockhurst University, University of Missouri, Central Missouri State and Northwest Missouri State
7/01/2013	Review documents produced to defendant via email ANTHEM 00577-591
7/09/2013	Receipt and review of amended notice to take deposition of Terrie Payne
7/11/2013	Receipt and review of amended notice to take deposition of Marilyn Knight
7/11/2013	Receipt and review of plaintiff's motion for extension of time to respond to summary judgment, defendant's motion to file six additional pages and order regarding same
7/15/2013	Review defendant's motion for summary judgment and suggestions in support
7/24/2013	Receipt and review of amended notice to take deposition of Marilyn Knight
8/05/2013	Receipt and review of motion for extension of time to respond to defendant's motion for summary judgment
8/06/2013	Review order granting extension
8/12/2013	Review motion to seal confidential documents and order granting
8/12/2013	Review opposition to motion for summary judgment
8/13/2013	Review defendant's motion to seal documents and order granting
8/28/2013	Review defendant's motion to extend time and order granting
8/30/2013	Review defendant's motion for additional pages and order granting
9/03/2013	Review defendant's motion for leave to file documents under seal and reply to motion for summary judgment
9/04/2013	Review order granting defendant's motion to file under seal
9/26/2013	Review plaintiffs' motion for oral argument
10/03/2013	Review defendant's opposition to motion for oral argument
11/06/2013	Review amended scheduling order
11/27/2013	Review notice of hearing
12/05/2013	Review notice of hearing cancellation
12/05/2013	Review order granting oral argument

12/05/2013 Review notice of hearing

12/09/2013 File motion to withdraw

4. Please explain why you noticed your withdrawal from *Champion* prior to resolution of the case.

Response: While under consideration for nomination to the District Court, I began consulting with several judges who had recently gone through the nomination process, including Judge Beth Phillips, to whom the *Champion* case had been reassigned. As our conversations increased, Judge Phillips believed this could create the appearance of impropriety under Canon 2 of the Code of Conduct for United States Judges. On December 6, 2013, Judge Phillips *sua sponte* recused herself from the case of *Lagas v. Verisma Systems, Inc.* 4:13-cv-01082-SWH because I was lead counsel and had a pending motion. The case was then randomly reassigned to Judge Ortrie Smith. Judge Smith, another judge with whom I consulted, then transferred the case to Magistrate Judge Sarah Hays.

Realizing that one of my ethical duties is candor to my client and co-counsel, I informed Mr. Graham that I believed Judge Phillips was going to recuse herself from all cases in which I was involved to avoid the appearance of impropriety. We decided it was in the best interest of the clients that I withdraw my entry of appearance to avoid *sua sponte* recusals that would delay the case. The parties in the *Champion* case notified the court of settlement on January 2, 2014.

5. Prior to noticing your appearance in *Champion*, did you consult any caselaw or ethics rules relevant to the creation of a conflict with a judge intended to occasion the judge's recusal? If so, cite the precedents, rules, or other materials you consulted.

Response: No. I did not enter my appearance with the intention of causing the judge's recusal. I fully intended to – and did – provide legal counsel to the plaintiffs and intended to serve as trial counsel if needed.

6. Have you appeared in any other cases before Senior Judge Wright in which you were Counsel of Record at the inception of the matter? If so, please provide the caption and case number for each such case.

Response: Yes. I have appeared in the following cases:

Madden et al. v. Great-West Life & Annuity, 4:02-cv-00186-SOW

Bray v. Ford Motor Company, Inc., 4:02-cv-00315-SOW

Pritchett et al. v. Cottrell, Inc., 4:04-cv-01004-SOW

Scott et al. v. Cottrell, Inc., 4:04-cv-01005-GAF

Todd et al. v. Cottrell, Inc., 4:04-cv-01006-GAF

Fix et al. v. Cottrell, Inc., 4:04-cv-01107-SOW

Paradise et al. v. Cottrell, Inc., 4:04-cv-01108-SOW

Fix et al. v. Cottrell, Inc., 4:05-cv-00006-GAF

Hancox v. Cottrell, Inc., 4:05-cv-00314-GAF

Newton v. State Farm Fire & Casualty Co., 4:14-cv-00158-DGK

7. **Have you every joined Counsel of Record in an ongoing lawsuit that was pending before Senior Judge Wright? If so, please provide the caption and case number for each such case.**

Response: No, not to my knowledge. I have, however, entered my appearance in numerous ongoing lawsuits to provide assistance to current legal counsel, including the following lawsuits:

Clark v. Morarity, Jackson County, Missouri, Case No. 1416-CV00628

Rice v. Allstate, 8th Circuit Court of Appeals, Case No. 13-1878

Berhorst v. Liberty Tow et al., Clay County, Missouri, Case No. 09CY-CV003953

Freeman v. Shaw, Cass County, Missouri, Case No. 07CA-CV03759

Comeaux v. Malone, Jackson County, Missouri, Case No. 04CV235222

**Senator Charles Grassley
Second Set of Supplemental Questions for the Record**

**Stephen R. Bough
Nominee, United States District Judge for the
Western District of Missouri**

Please respond to the following Second Set of Supplemental Questions for the Record, which addresses answers you provided to Senator Grassley's Supplement Questions for the Record on November 10, 2014.

1. **In response to Supplemental Question for the Record No. 3, you stated that you are unable "to provide additional documentation due to the attorney-client privilege." The question specifically anticipated that some responsive documents could be, in part, subject to the privilege and asked you to provide redacted versions of all responsive documents. Accordingly, I repeat my initial request that you provide all documentation – including but not limited to billing records, email communications, and legal memoranda – supporting your response to Supplemental Question No. 3, redacted appropriately to protect any privileged material.**

Response: In that I was working on this case on a contingent fee agreement I did not bill or document any hours, but I estimate I worked several dozen hours on this case. The plaintiffs' responses to defendants' motions for summary judgment are the only substantive legal memoranda that arose during my involvement in the case. While I provided advice and edits regarding these three pleadings, that advice and drafts of these memoranda are protected by the attorney-client privilege. I have, however, attached the final version of these pleadings which were filed with the Court.

2. **Please describe with specificity any court proceedings related to the *Champion* matter that you attend either telephonically or in person, including, but not limited to, depositions, status hearings, motions hearing, and settlement negotiations. Please include with your response the date on which the proceeding occurred.**

Response: My role in the *Champion* case was to serve as co-trial counsel and to advise on strategy and federal procedure. As such, I did not personally appear at the depositions. Only one hearing occurred during the time I was counsel in the *Champion* case and it was a telephone scheduling conference call on May 21, 2013. I did not participate in this conference call because I had previously committed to attending the St. Paul's Episcopal Day School Trustee's meeting at the same time, but I did provide my co-trial counsel with my trial conflict dates.

3. **Please provide the caption and case number of all matters that were assigned, or are currently assigned, to Senior Judge Wright in which you noticed an appearance since January 1, 2006.**

Response: In the case of *Newton v. State Farm Fire & Casualty Co.*, 4:14- cv-00158-DGK, I filed the case and it was removed to federal court on February 14, 2014. The case was reassigned from Magistrate Judge Larsen to Senior Judge Wright on February 20, 2014. On that same day Senior Judge Wright recused himself.

**Questions for the Record
Senator Ted Cruz**

**Stephen R. Bough
Nominee: U.S. District Judge for the Western District of Missouri**

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I do not have any particular judicial philosophy. In addition to believing that our justice system requires that judges always follow precedent, I believe that every case should be handled in a just and speedy manner with sensitivity to the cost that litigation can impose on both sides of a dispute. I also believe that judges should be neutral umpires in the litigation process. Having served as a law clerk for a United States District Judge, I was able to witness the qualities of a great trial judge. Those qualities include hard work, following the rules, being available to the attorneys to resolve disputes, listening calmly to arguments and acting fairly and impartially. I have not carefully studied the justices of the Warren, Burger and Rehnquist Courts to be comfortable saying that their views are analogous to my own views.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If I have the opportunity to serve as a trial judge, it would be my duty to follow binding precedent. The United States Supreme Court has looked at the public understanding at the time of the enactment of the Constitution and I would follow that and any other binding precedent. *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If I have the opportunity to serve as a trial judge, I would not overrule established precedent set by higher courts.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If I have the opportunity to serve as a trial judge, it would be my duty to follow precedent, including *Garcia*. A judge's personal feelings about precedent should never interfere with following precedent.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court has ruled on numerous cases involving the application of the Commerce Clause to non-economic activity. According to precedent, Congress may regulate (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce or people or things in interstate commerce; and (3) activity that has a substantial effect on interstate commerce. See, e.g. *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). If I have the opportunity to serve as a trial judge, it would be my duty to follow the precedent of the United States Supreme Court.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The power of the President to issue executive orders or take executive actions must come from either the acts of Congress or the United States Constitution. See, e.g., *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Medellin v. Texas*, 552 U.S. 491 (2008). If I have the opportunity to serve as a trial judge, it would be my duty to follow that and other precedent of the United States Supreme Court.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: According to the United States Supreme Court, a right is fundamental for substantive due process purposes when that right is "deeply rooted in this Nation's history and traditions." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations in quotation omitted). If I have the opportunity to serve as a trial judge, it would be my duty to follow that and other precedent of the United States Supreme Court.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: According to the United States Supreme Court, strict scrutiny is only appropriate in limited circumstances such as when a law infringes on a fundamental right or involves a suspect classification such as race. *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). Intermediate scrutiny is appropriate in limited types of cases, including classifications based on gender. *United States v. Virginia*, 518 U.S. 515 (1996). The United States Supreme Court has also discussed when a classification should be subjected to heightened scrutiny in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). If I have the opportunity to serve as a trial judge, it would be my duty to follow that and other precedent of the United States Supreme Court.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have not formed any expectation on the use of racial preferences in public higher education fifteen years from now. If I have the opportunity to serve as a trial judge, it would be my duty to follow the precedent of the United States Supreme Court, including *Grutter v.*

Bollinger, 539 U.S. 306 (2003), and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.)	
Plaintiffs)	Case No.: 4:11-CV-00506-BP
)	
)	
-vs-)	
)	
HIGH-TECH INSTITUTE, INC.)	
d/b/a ANTHEM EDUCATION GROUP)	
and HIGH TECH INSTITUTE)	
Defendant.)	

PLAINTIFFS' COMMON STATEMENT OF FACTS
REFERENCED IN
SUGGESTIONS IN OPPOSITION TO
DEFENDANTS' TWO MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs Marcus Champion, Jody Hendrix, and Kelsey DeSanto respectfully submit the following facts which controvert Defendant's alleged summary judgment facts and which show there to be genuine issues of material fact such that Plaintiffs' claims should proceed to trial and be decided by a jury. This pleading and these facts are incorporated by reference as part of Plaintiffs' factual responses in Plaintiffs' Suggestions in Opposition to the two pending Motions for Summary Judgment filed by Defendant.

A. Claims of Plaintiff Marcus Champion

1. Plaintiff Marcus Champion enrolled in High-Tech Institute's Criminal Justice Program in late 2005. The following are some of the representations made to him by a High-Tech Institute Admissions Representative prior to his enrollment in order to get Mr. Champion to enroll:

- * Employment would be located by High Tech for graduates of the High Tech criminal justice program;

- * That the school had professionals in the placement department who were connected to a network of potential employers for High Tech criminal justice graduates and that these professionals were in direct contact with criminal justice industry contacts at prospective employers;
- * Graduates of the High Tech criminal justice program could reasonably anticipate employment in government criminal justice positions;
- * Graduates of the High Tech criminal justice program could reasonably anticipate employment in positions such as: court bailiffs, homeland security jobs, probation officers, and security specialists;
- * That the average starting salary for High Tech criminal justice program graduates was between \$40,000 and \$50,000;
- * That credits earned at High Tech would transfer to all other colleges and universities;
- * That the school and program were fully and properly accredited; and,
- * That the Criminal Justice Program had internships and other hands-on opportunities.

(Second Amended Complaint, ¶ 13a, b, d, e, f, g, ¶ 18h, i, j, k).

2. None of the above-referenced representations turned out to be true. (Second Amended Complaint, ¶ 19).

3. When Marcus Champion was a Senior at Hickman Mills High School, High Tech and its Admissions Representative Kathy Carrier had a booth at a College Career Fair. (Champion Depo., pp. 19:10-25, 31:10-5, 33:18-34:15).

4. During their discussions at the College Career Fair and in the in-home meeting, High Tech Admissions Representative Kathy Carrier represented to Marcus Champion that High Tech provided assistance in locating employment and that High Tech's graduates are guaranteed a job in the field. (Champion Depo., pp. 80:45-14, 81:1-10, 126:15-128:22).

5. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19).

6. During their discussions at the College Career Fair, High Tech Admissions Representative Kathy Carrier represented that the "average starting salary" for High Tech Criminal Justice Program graduates was between \$40,000 and \$50,000 per year. (Champion Depo., pp. 127:13-128:6).

7. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19).

8. After hearing these initial representations from High Tech Admissions Representative Kathy Carrier at the College Career Fair, Marcus Champion told his mother about it, and his mother later contacted Kathy Carrier based on the contact information she had provided Marcus at the College Career Fair. (Champion Depo., pp. 33:18-34:3; Jones Depo., p. 29:4-10).

9. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier met with Marcus Champion and his mother. (Champion Depo., p. 38:21-39:15).

10. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier represented at that time that High Tech Institute – Kansas City had professionals in the placement department who were connected to a network of potential

employers for High Tech criminal justice graduates and that these professionals were in direct contact with criminal justice industry contacts at prospective employers. (Champion Depo., pp. 129:11-130:2).

11. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19; Champion Depo., pp. 130:3-23).

12. In the meeting at Marcus Champion's home in December, 2005, High Tech's Admissions Representative represented that graduates of the High Tech Criminal Justice Program could reasonably anticipate employment in government criminal justice positions. (Champion Depo., p. 131:12-21).

13. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19; Champion Depo., pp. 131:24-132:5).

14. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier represented that graduates of the High Tech Criminal Justice Program could reasonably anticipate employment in positions such as: court bailiffs, homeland security jobs, probation officers, detectives, police officers, parole officers, and security specialists. (Champion Depo., pp. 40:16-41:8, 133:2-23, 134:21-135:2).

15. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19).

16. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier represented that the Criminal Justice Program was a

hands-on program where Marcus could get a lot of hands-on training. Ms. Carrier said that there would be hands-on at actual crime scene investigations, that there would hands-on in the firearms training, and that High Tech had internships with local departments. (Champion Depo., pp. 40:16-24, 89:13-90:3).

17. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19; Champion Depo., pp. 90:4-17).

18. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier showed a flip chart and represented that the normal starting salary for entry-level detectives and security agents was between \$40,000 and \$50,000 per year and that the normal starting salary for entry-level probation and parole officers was \$60,000 per year. Mr. Champion testified he believed he was receiving the school's knowledge on the subject of starting salaries for its Criminal Justice Program graduates – "I figured that, to me, that's what they knew they were paying at that time." (Champion Depo., pp. 51:19-52:25, 113:16-114:4; Jones Depo., pp. 41:1-13, 45:23-46:4).

19. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19; Champion Depo., p. 53:1-8).

20. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier represented that the credits earned at High Tech Institute – Kansas City would transfer Marcus chose to go to a different school and pursue a four-year degree – saying "your credits will go to any school you choose to go to." (Champion Depo., pp. 106:19-

107:24). Ms. Carrier also specifically represented that the High Tech credits would transfer to UMKC and other schools like UMKC, such that Marcus could further his education at a public university and would only have to do two more years for a Bachelor's Degree. (Champion Depo., pp. 108-13-109:10; Jones Depo., pp. 50:4-51:7).

21. At a later point, a High Tech Institute Financial Aid Representative reiterated the representation that High Tech Institute's credits would transfer if Marcus Champion later chose to attend another school for a Bachelor's Degree. (Champion Depo., pp. 106:1-18).

22. The representations set forth in the two immediately preceding paragraphs, made by High Tech's Representatives, were false. (Second Amended Complaint, ¶ 19; Champion Depo., pp. 105:18, 143:18-144:3, 144:9-17; Jones Depo., pp. 73:7-75:8).

23. Marcus Champion attempted to transfer his High Tech credits to Blue River College for the police academy, and he was informed by Blue River College that the High Tech credits were not transferable. (Champion Depo., pp. 143:18-144:3, 144:9-17).

24. Marcus Champion has contacted UMKC to see if he could attend their Criminal Justice Program to continue and get a four-year degree, and he was told by UMKC that none of his High Tech credits were transferable to UMKC. (Champion Depo., p. 144:4-8).

25. Marcus Champion has not been able to continue his education because of the non-transferability of High Tech's credits. He will have to start over. (Champion Depo., p. 187:13-19).

26. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier did not tell advise Marcus or his mom that there had not yet been a graduate from the Criminal Justice Program at High Tech Institute – Kansas City. (Champion Depo., pp. 73:20-78:6).

27. Despite this, Ms. Carrier had Marcus sign the front side of a document entitled "A Message From The Campus President." Marcus read the top part of the document but was not shown that there was even a back side to the document. (Champion Depo., pp. 75:20-77:8).

28. High Tech Institute does not leave a copy of the "A Message From The Campus President" document with the student enrollee, and did not leave a copy of it with Marcus Champion or his mother. (Champion Depo., pp. 73:20-78:6).

29. High Tech does not have prospective student enrollees sign on the reverse side of the "A Message From The Campus President" document where the statistical information is actually presented. There is no legitimate reason for High Tech not to require such a signature be directly on the page conveying supposedly important information. (Torres I Depo., pp. 39:17-40, Champion Depo., pp. 75-78).

30. High Tech does not leave a copy of the "A Message From The Campus President" document home with the student enrollee, and there is no legitimate reason why it does not do so. In fairness, a copy should be provided to the student enrollee. (Torres I Depo., pp. 37:21-38:11, 39:17-40:1, 43:19-23).

31. High Tech Institute also failed to inform Marcus Champion fully regarding the issue of transferability of High Tech credits. (Champion Depo., p. 166:1-8).

32. High Tech Institute also failed to inform Marcus Champion regarding the status of their academic accreditation. (Champion Depo., p. 166:14-19).

33. During this in-home meeting, High Tech Admissions Representative Kathy Carrier was continually filling out paperwork and obtaining signatures from Marcus Champion and his mother. (Champion Depo., p. 60:5-13).

34. During this one in-home meeting, Marcus Champion signed the enrollment paperwork to attend High Tech Institute's Criminal Justice Associates Degree Program. (Champion Depo., pp. 41:15-42:1).

35. Marcus Champion did not read the documents that Kathy Carrier asked him to sign at this in-home meeting. He skimmed them, but did not read because of a "bad habit" of not reading materials when presented to him for signature by persons who have gained his trust. (Champion Depo., pp. 60:19-22, 64:9-14, 65:7-13, 98:1-99:19).

36. Marcus Champion's mom did not read the entirety of the documents that Kathy Carrier asked her to sign at this in-home meeting. She only read what was filled in and then trusted the oral explanation of the Admissions Representative. (Jones Depo., p. 16:7-16, 16:23-3, 23:3-7, 25:11-14, 26:L20-23, 27:8-17, 28:2-19, 40:16-17, 48:17-25). Marcus Champion's mother, Sandra Jones, testified, "I feel that we trusted her explanation of the documents and we did not take the time to read through them. . . . we trusted the explanations that we were being given at that time" (Jones Depo., pp. 55:18-23, 58:8-10).

37. Marcus Champion was not provided a catalog by Kathy Carrier, even though Ms. Carrier had Marcus unknowingly sign documents that said he had received a school catalog. (Champion Depo., p. 64:6-8)

38. Marcus Champion does not recall copies of documents being left after meeting. (Champion Depo., pp. 46:14-47:10).

39. At orientation in June of 2006, High Tech officials reiterated the representations that there would be job placement as well as internships. (Champion Depo., p. 105:1-10).

40. Marcus Champion did not read other documents which High Tech had students sign

at orientation. He did not read because of a "bad habit" of not reading materials when presented to him for signature by persons or an institution who he at that time trusted. (Champion Depo., pp. 83:9-84:23).

41. Marcus Champion began classes at High Tech in June of 2006, after graduating from High School in May. (Champion Depo., p. 20:7-9).

42. Marcus Champion was already working as a security guard before he started school at High Tech. (Champion Depo., pp. 21:9-21).

43. Marcus Champion did not investigate the things represented to him by Kathy Carrier. He noted, "I didn't feel that Ms. Carrier was telling me anything that was untrue, so I kind of just believed what I was being shown." (Champion Depo., p. 69:13-17).

44. On the form he completed at some point during the initial in-home visit with High Tech Admissions Representative Kathy Carrier, Marcus Champion intended to write that he expected to be making \$20 per hour and not \$20,000. High Tech's counsel Marty Loring initially thought that a \$20 per hour job multiplied by 2,000 work hours would result in a \$48,000 annual salary. Marcus Champion agreed with Mr. Loring's math, until both acknowledged that math was not their strong suits. (Champion Depo., pp. 93:1-15).

45. Close to the time of his graduation in May of 2008, Marcus Champion learned from another student in the Criminal Justice Program, Jody Hendrix, that High Tech Institute had been having issues with its accrediting bodies. (Champion Depo., pp. 141:13-142:17). The accreditation issues were important to Marcus. (Champion Depo., pp. 141:13-19).

46. Marcus Champion graduated in May of 2008 with an Associates of Applies Science in Criminal Justice. High Tech failed to provide him any meaningful job placement assistance, and

Marcus Champion has never been able to earn more than \$15 per hour in security guard, prison guard, or other positions. (Champion Depo., pp. 89:13-90:17, 187:3-188:16). Marcus Champion sought assistance but he did not receive any assistance in the graduate placement area from High Tech. (Champion Depo., pp. 105:1-10, 130:17-23).

47. High Tech Institute charged Marcus Champion more than \$25,000 in tuition and books alone. (Defendant's Ex. C).

48. Kathy Carrier (Katherine Gharst) was the High Tech Admissions Representative who enrolled Marcus Champion. (Carrier Depo., pp. 4:16-5:6). Ms. Carrier worked for High Tech Institute – Kansas City as an Admissions Representative during the time period between January of 2004 and the summer of 2007. (Carrier Depo., p. 7:1-17). She understood that she was a salesperson in her role as a High Tech Admissions Representative. (Carrier Depo., p. 27:21-23). Her starting pay at High Tech was \$40,000 per year, and she was making \$70,000 per year when she left. (Carrier Depo., p. 130:3-6). She had previously been employed doing mortgages, as a bridal salon manager, and in the interior design business. (Carrier Depo., pp. 123:21-126:22). She left High Tech to work as an account executive for a heating and air-conditioning cleaning company. (Carrier Depo., p. 9:12-23). Ms. Carrier has some college credits, but she does not remember if the number of college credits she has is more than twenty. The courses she took were in music, acting, and interior design. (Carrier Depo., pp. 13:17-15:14).

49. In addition to Marcus Champion, Kathy Carrier has enrolled at least two other former High Tech students who have made claims that she engaged in fraud and deception regarding job placement, salary, and credit transfer – Chad Anderson and Virginia Saenz. (Carrier Depo., pp. 144:17-146:10, 147:15-22).

50. Kathy Carrier utilized scripts and flip charts as part of her High Tech Admissions Representative presentation. (Carrier Depo., p. 23:1-17).

51. Kathy Carrier admitted she did not give a catalog to students prior to their enrollment. She claims, "I showed it, but I didn't give it to them." She could not recall any particular part of the catalog that she showed the student. (Carrier Depo., p. 28:16-23).

52. In her deposition, Kathy Carrier originally testified that High Tech trained her that it was "regionally accredited, which meant that there -- if a student wanted to transfer their credits, they were transferrable, however, it would be up to the accepting school as to whether or not they would accept those credits." She further testified, "we were nationally accredited initially and then we were regionally accredited, I don't know." (Carrier Depo., pp. 49:21-52:8). She testified, "Again, my training was that the credits were transferrable, but it would have to be up the accepting school as to whether or not they would accept those credits. And that's exactly what I would tell my students." (Carrier Depo., p. 52:9-16).

53. After a break, Ms. Carrier said that she had been confused when she said High Tech was regionally accredited, claiming, "I was confused. Because when I think about it, we were nationally accredited." (Carrier Depo., pp. 59:22-60:5).

54. Kathy Carrier does not recall what High Tech Institute told her was the difference between national accreditation and regional accreditation, and she does not recall High Tech ever advising her that nationally accredited schools' credits don't transfer well to other schools. (Carrier Depo., pp. 60:13-61:13).

55. Regionally accredited colleges and universities such as Avila, Missouri Valley College, Drury University, Rockhurst University, William Jewell, UMKC, and the Community

Colleges will not even consider for transfer credits from nationally accredited schools such as High Tech Institute/Anthem College. (Carrier Depo., pp. 62:7-65:10). High Tech never informed Admissions Representative Kathy Carrier of this fact. (Carrier Depo., pp. 62:7-65:10).

56. High Tech Admissions Representative Kathy Carrier does not remember ever advising student enrollees that national accreditation meant that credits would not transfer as readily as regionally accredited institutions' credits. (Carrier Depo., pp. 65:17-66:9).

57. High Tech Admissions Representative Kathy Carrier does not remember ever being given anything in writing from High Tech regarding what she could or could not tell a potential student enrollee about prospective salary. (Carrier Depo., p. 92:11-14, 122:18-21).

58. High Tech Admissions Representative Kathy Carrier does not remember ever being given anything in writing from High Tech regarding what she could or could not tell a potential student enrollee about job placement. (Carrier Depo., p. 92:15-18, 122:14-17).

59. High Tech Admissions Representative Kathy Carrier does not remember ever being given anything in writing from High Tech regarding what she could or could not tell a potential student enrollee about credit transfer. (Carrier Depo., p. 122:22-25).

60. High Tech trained Admissions Representative Kathy Carrier to get the student interested and enrolled on the same day. (Carrier Depo., p. 112:21-113:6).

61. During her time period at High Tech, Admissions Representative Kathy Carrier was never made aware of any written policies regarding what she should do if she became aware of a student complaint. She doesn't remember any training on that subject. (Carrier Depo., p. 127:14-21).

61. High Tech Admissions Representative Kathy Carrier knew that she had to enroll

students or she wasn't going to keep her job. (Carrier Depo., p. 131:12-18, 246:18-25). She received pay increases based on the number of student enrollments she accomplished. (Carrier Depo., p. 247:4-7). There were rankings exchanged at High Tech showing which reps had enrolled the most and who had enrolled the least. (Carrier Depo., p. 136:6-13).

62. High Tech Admissions Representative Kathy Carrier admits she told Marcus Champion and his mother that High Tech would assist him in finding a job in the program field. (Carrier Depo., pp. 215:17-22). She does not recall whether or not she told Marcus and his mom that a very high percentage of criminal justice graduates get jobs in the career field. (Carrier Depo., pp. 215:12-16).

63. High Tech Admissions Representative Kathy Carrier admits a student should be able to trust what he or she is told by a High Tech Admissions Representative prior to enrollment. (Carrier Depo., pp. 222:22-223:2).

64. High Tech Admissions Representative Kathy Carrier admitted she was not aware of any facts to support a representation that graduates of High Tech's Criminal Justice Program could anticipate certain employment in certain positions, or that the average starting salary was \$40,000 to \$50,000 per year, or that credits from High Tech would transfer to all other colleges and universities. (Carrier Depo., pp. 228:25-229:9).

65. Kathy Carrier submitted a written letter of resignation from High Tech. (Carrier Depo., pp. 9:23-10:2). Her letter of resignation included that she had expressed her concerns numerous times only to have them continuously fall on deaf ears. (Carrier Depo., pp. 235:8-23). She further wrote as follows: "In order to continue representing High Tech with confidence, I would have to see some change at the local campus," and that change was to get rid of President Erin Cunningham. (Carrier Depo., pp. 238:16-239:13). She also wrote: "Our job is to change peoples'

lives by doing whatever it takes to get them into school and help complete their education.” (Carrier Depo., pp. 240:23-241:3).

B. Claims and Testimony of Plaintiff Jody Hendrix

66. Plaintiff Jody Hendrix enrolled in High-Tech Institute’s criminal justice program in 2006. Mr. Hendrix attended Liberty High School and then served in the Air Force from March of 1998 to October of 2002, when he was honorably discharged. He served in several military law enforcement and other positions, and he served in Saudi Arabia on two different occasions in 2000 and 2001. (Hendrix Depo., pp. 69:18-72:25). Prior to attending High Tech, Mr. Hendrix had also already been employed in several loss prevention and other security positions. (Hendrix Depo., pp. 8:12-9:6, 74:18-75:7).

67. The following are some of the representations made to Jody Hendrix by a High-Tech Institute Admissions Representative prior to his enrollment:

- * Employment would be located by High Tech for graduates of the High Tech criminal justice program;
- * That the school had professionals in the placement department who were connected to a network of potential employers for High Tech criminal justice graduates and that these professionals were in direct contact with criminal justice industry contacts at prospective employers;
- * Most of the graduates of the High Tech criminal justice program were hired by the Kansas City Missouri Police Department;
- * Graduates of the High Tech criminal justice program could reasonably anticipate employment in government criminal justice positions;
- * Graduates of the High Tech criminal justice program could reasonably

anticipate employment in positions such as: coast guard crewman, court clerks, court bailiffs, crime scene investigators, crime scene analysts, highway patrol officers, homeland security jobs, park rangers, probation officers, security specialists, and victim advocates;

- * That the average starting salary for High Tech criminal justice program graduates was between \$40,000 and \$60,000;
- * Credits earned at High Tech would transfer to all other colleges and universities;
- * That the school and program were fully and properly accredited.; and,
- * That the Criminal Justice Program had internships

(Second Amended Complaint, ¶ 13; ¶18 h, i, j, k; Hendrix Depo., pp. 9:9-10:8, 10:23-11:8, 230:14-22, 271:13-20).

68. None of the above-referenced representations turned out to be true. (Second Amended Complaint, ¶ 19).

69. Jody Hendrix first learned about High Tech Institute from a CareerBuilder newspaper that has job listings. (Hendrix Depo., p. 15:7-19).

70. During his initial visit to High Tech Institute—Kansas City around July of 2006, Jody Hendrix saw playing in the lobby a video. The video depicted jobs that Mr. Hendrix would only later find out were not attainable without a Bachelor's Degree. (Hendrix Depo., pp. 12:19-24, 84:7-85:10, 139:1-6; 140:3-20). The video is the one to which Criminal Justice instructor Cheryl Ann Stewart objected as noted in her Affidavit referenced in paragraph 176, below.

71. During his initial visit to High Tech Institute—Kansas City, Jody Hendrix met with High Tech Admissions Representative Faith Perdue. (Hendrix Depo., p. 12:10-11).

72. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that High Tech Institute credits would transfer to all other colleges and specifically to UMKC and the Community Colleges. (Hendrix Depo., pp. 9:12-18, 191:4-193:8, 194:3-195:3, 196:17-197:1, 232:6-14)

73. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19 and paragraphs below).

74. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that High Tech Institute had graduate placement advisors who were going to be in direct contact with potential employers, who had industry ties, and who were experts in the Criminal Justice field. (Hendrix Depo., pp. 9:19-10:2, 49:21-50:9, 51:6-52:3, 221:13-16, 222:221-223:5). A written brochure also stressed there would be direct contact with potential employers made by graduate placement for student graduates. (Hendrix Depo., p. 97:2-5).

75. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19).. There was not even a Criminal Justice Placement Advisor for much of the time period that Jody Hendrix and Marcus Champion were in school and in need of placement. (Hendrix Depo., pp. 10:3-8). Mr. Hendrix did not receive any graduate placement assistance from High Tech.. (Hendrix Depo., pp. 126:19-127:8, 129:9-133:23).

76. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that High Tech Institute guaranteed that it would locate in-field position for him upon graduation. (Hendrix Depo., pp. 9:24-10:2, 96:7-96:20).

77. The representations set forth in the immediately preceding paragraph, made by High

Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19).

78. At their first meeting, High Tech Admissions Representative Faith Perdue represented that positions such as juvenile probation officer, coast guard crewman, victim advocates – and with starting pay of \$50,000 to \$60,000 per year as a juvenile probation officer – were available to High Tech graduates with only an Associate's Degree and without a Bachelor's Degree. (Hendrix Depo., pp. 139:1-6; 140:3-20, 226:20-228:2).

79. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19; (Hendrix Depo., pp. 139:1-6; 140:3-20, 158:17-159:17).

80. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment in government criminal justice positions. (Hendrix Depo., p. 226:10-16).

81. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19).

82. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that most of the graduates from High Tech's Criminal Justice Program were being placed with the Kansas City Police Department. (Hendrix Depo., p. 143:1-12, 144:25-145:7, 223:6-224:7).

83. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19). The only person from to become so employed was already in police academy at the time he was attending High Tech. (Hendrix Depo., p. 146:2-12).

84. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that there would be an externship in the Criminal Justice Program. (Hendrix Depo., p. 162:17-25).

85. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19; Hendrix Depo., p. 162:17-25).

86. Financial Aid at High Tech Institute also misled Jody Hendrix in advising the his GI Bill would cover the cost of the school, but that did not end up being the case. (Hendrix Depo., pp. 23:9-24:9, 234:24-236:10).

87. Jody Hendrix took a few days and two or three visits before he was officially enrolled due to having to find the ability to pay the \$50 enrollment fee. (Hendrix Depo., pp. 16:14-17:20, 88:19-89:7).

88. Jody Hendrix signed where he was told to sign by financial aid and only skimmed the materials. (Hendrix Depo., p. 24:4-9).

89. Jody Hendrix did not read any of the documents that High Tech Admissions Representative Faith Perdue had him sign, as there was a stack of materials and he trusted her. "I mean, the air that she presented this in and the facts – the things that she was saying verbally to me motivated me that I didn't have to search for fine print or things written on the back of documents." (Hendrix Depo., pp. 81:15-82:18, 91:8-93:11, 93:22-94:8, 103:6-12, 104:1-3). High Tech Admissions Representative "told me this covered everything we discussed. Initial here, here, here, sign and date and we move on." (Hendrix Depo., p. 94:8-13).

90. Jody Hendrix was not shown the back side of the Message from Campus President document. (Hendrix Depo., p. 99:7-91, 103:6-12). One document was signed by Jody Hendrix when

it was blank. (Hendrix Depo., pp. 136:20-137:4).

91. Jody Hendrix does not recall ever receiving a handbook from High Tech. (Hendrix Depo., pp. 110:18-111:4). He had never seen the catalog. (Hendrix Depo., p. 148:6-17).

92. While attending High Tech, Jody Hendrix, who had fired an M16 while in military duty, was instructed in a ballistics course by someone who had never held a gun. (Hendrix Depo., p. 10:12-15).

93. At the all-school meeting in late 2007 or early 2008 at which High Tech – Kansas City Campus President Erin Cunningham announced that the school was having issues with its accreditation body, the complete bases for the issues were not accurately disclosed, nor was the actual status of the loss of accreditation approval to issue Associate's Degrees. "We were led to believe that they were only being examined and everything was going to be fine." (Hendrix Depo., pp. 52:9-53:9, 56:16-57:3, 59:1-17). At that meeting, High Tech Institute – Kansas City Campus President Erin Cunningham told the students that their High Tech credits would transfer to the Community Colleges if they wanted to transfer. (Hendrix Depo., pp. 59:1-17, 61:7-11).

94. Jody Hendrix contacted UMKC and was told that the High Tech Institute credits would not transfer so as to allow Mr. Hendrix to pursue the Bachelor's Criminal Justice Program at UMKC. (Hendrix Depo., pp. 26:16-27:11, 193:9-23). His credits also did not transfer from High Tech Institute to Colorado Technical University or University of Phoenix. (Hendrix Depo., pp. 27:4-21).

95. Jody Hendrix did not receive any of the promised job placement assistance from High Tech. His first job after graduation was as an associate substance abuse counselor for Kansas City Community Centers, making approximately \$25,000 per year. (Hendrix Depo., pp. 81:1-11). Mr. Hendrix found this position on his own. (Hendrix Depo., pp. 135:19-22). This job was not in

the area in which he wanted to work – geographically or professionally, nor was his subsequent position with Marillac Center for Children, where he made between \$10 and \$12 per hour. (Hendrix Depo., pp. 135:23-136:17, 170:20-172:16, 216:1-8).

96. The contractual agreement of the school to Jody Hendrix included the promises of job placement assistance, professional ties, and internships/externships. (Hendrix Depo., p. 237:6-20, 238:22-239:12). None of these things ever happened. (Hendrix Depo., p. 245:1-23). Jody Hendrix sought assistance but he did not receive any assistance in the graduate placement area from High Tech. (Hendrix Depo., pp. 237:6-20, 238:22-239:12, 245:1-23).

97. Jody Hendrix recalls filling out several Student Critique forms during school and voicing his displeasure with a lot of the things that were happening at High Tech. (Hendrix Depo., pp. 82:7-284:2).

98. Faith Perdue was the High Tech Admissions Representative who enrolled Jody Hendrix. (Hendrix Depo., p. 12:10-11). Ms. Perdue worked for High Tech Institute – Kansas City as an Admissions Representative during the time period between May of 2006 and January of 2007. (Perdue Depo., p. 12:10-12). Prior to going to work for High Tech, Ms. Perdue was a leasing agent and an assistant manager for an apartment community. (Perdue Depo., pp. 109:24-110:21). She did not have any college credit hours before she went to work for High Tech Institute as an Admissions Representative. (Perdue Depo., p. 111:8-23).

99. Former High Tech Admissions Representative Faith Perdue had not recollection of enrolling a student by the name of Jody Hendrix at High Tech. Even after reviewing documents, she has no specific recall of her interactions with Jody Hendrix. (Perdue Depo., p. 12:14-21).

100. During her employment at High Tech Institute, Faith Perdue was supervised by

Assistant Director and Director of Admissions Deborah Lang. (Perdue Depo., p. 49:12-25, 125:16-21).

101. While working at High Tech, Faith Perdue was never informed that there were many complaints coming from students about misinformation being provided by Admissions. (Perdue Depo., pp. 51:19-52:11). During her training, she was never advised of the extensive prior history of complaints of misrepresentations against High Tech Admissions. (Perdue Depo., pp. 56:16-21).

102. Several complaints of misrepresentations were made by Criminal Justice and Surgical Technology Program Students in their Student Critiques shortly after Faith Perdue was hired in 2006, including complaints about job placement, credit transfer, and starting salary misrepresentations made by admissions at High Tech. (Perdue Depo., pp. 53-63, 74-76, 79-83, 101-103, 106-109).

103. Former High Tech Institute Admissions Representative Faith Perdue admitted that she would tell student enrollees as a standard practice that the school had a Career Services Department available to assist them. (Perdue Depo., p. 77:3-9). She was trained by High Tech to advise students that there was "continuous placement assistance." (Perdue Depo., pp. 162:20-163:4).

104. When enrolling students, former High Tech Institute Admissions Representative Faith Perdue followed the things in the training manual and the training she received from High Tech. (Perdue Depo., p. 77:14-19).

105. Faith Perdue was the Admissions Representative for Letoya Hardin, one of the 38 Plaintiffs in the Fallo case who claimed misrepresentations and deceptions in job placement, credit transfer, and other matters. Ms. Perdue was never made aware that Ms. Hardin had claimed that Ms. Perdue and High Tech had defrauded and deceived her. (Perdue Depo., pp. 78:8-24, 87:20-97:15,

100:15-23). Faith Perdue admits she would have used the same routine with Jody Hendrix that she did with Letyoa Hardin. (Perdue Depo., p. 96:6-11).

106. Former High Tech Admissions Representative Faith Perdue admits that she told Jody Hendrix that he could be a juvenile probation officer, bailiff, victim advocate, detectives, as well as the other jobs listed in the High Tech written sales literature, upon completion of his Associated of Applied Science from High Tech Institute. (Perdue Depo., pp. 104:10-106:13, 165:15-170:22).

107. Faith Perdue relied on High Tech to train her on the difference between regional accreditation and national accreditation. (Perdue Depo., pp. 112:16-113:4) Faith Perdue acknowledged that there is a big difference, and that regional accreditation can be much better than national accreditation, depending on the student. (Perdue Depo., p. 113:10-14).

108. Faith Perdue does not remember High Tech training her on the difference between regional and national accreditation, and she does not recall being told by High Tech that credits from regionally accredited institutions would transfer better than from the nationally accredited institution. (Perdue Depo., pp. 115:12-24). She was never told that neither Rockhurst nor Avila will accept any of High Tech's credits. (Perdue Depo., p. 117:5-9).

109. Faith Perdue was able to obtain a "conversion" – getting the enrollment – on 47 percent of the potential enrollees such as Jody Hendrix that she got in for a face-to-face interview. (Perdue Depo., pp. 123:23-124:22).

110. On one of her High Tech performance reviews, Faith Perdue was reprimanded for having a low conversion rate. (Perdue Depo., p. 125:25-126:14).

111. At the time she enrolled Jody Hendrix, Faith Perdue was well below the required number of enrollments that she was required to have. (Perdue Depo., pp. 205:4-206:18).

112. While Faith Perdue was an Admissions Representative at High Tech, there were

Admissions Meetings every day, and there was a whiteboard which listed the students that each Admissions “advisor” had enrolled for the next start. (Perdue Depo., pp. 126:15-20, 127:4-14).

113. Faith Perdue received quotas from High Tech in terms of the number of enrollments she was expected to make. (Perdue Depo., pp. 127:15-128:8).

114. High Tech Institute trained Admissions Representative Faith Perdue to not give out cost information over the phone. (Perdue Depo., pp. 128:17-135:25, 186:21-187:5, 198:14-200:8).

115. High Tech Institute trained Admissions Representative Faith Perdue to “not hand out or ever show a catalog until the student is enrolled.” (Perdue Depo., pp. 128:17-135:5, 136:19-137:4, 202:4-18). She followed that policy and training. (Perdue Depo., p. 137:5-8). If it violated ACCSCT guidelines, it was because High Tech trained her to it that way. (Perdue Depo., pp. 137:9-138:6).

116. As part of her training, High Tech Institute trained Admissions Representative Faith Perdue assumed a fake identity, went to other for-profit colleges, and acted like she was interested in attending so as to “mystery shop” the competition. (Perdue Depo., p. 139:10-142:22, 206:20-207:22).

117. As a High Tech Admissions Representative, Faith Perdue was expected to make 100 calls to potential students per day. (Perdue Depo., p. 145:1-3). She had a set number of potential students that she was required to interview in-person each day, and High Tech encouraged the Admissions Representatives to double-book. (Perdue Depo., p. 146:14-22). Total time for the entire process from the minute the potential student comes in the door to talk until the time they leave signed up and enrolled by Faith Perdue is one hour to an hour and a half. (Perdue Depo., p. 147:7-25).

118. High Tech Institute trained Admissions Representative Faith Perdue to seek to find

the prospective student's hot button. (Perdue Depo., p. 188:17-20, 201:11-20).

119. High Tech Institute trained Admissions Representative Faith Perdue to say to each prospective student: "I am going to set aside some time for you and I to get together and do some one-on-one career planning." (Perdue Depo., p. 190:8-16).

120. High Tech Institute trained Admissions Representative Faith Perdue to tell each prospective students that she "will be able to help you map out a path to ensure your career success," and Faith Perdue followed this training. (Perdue Depo., pp. 190:17-191:6).

121. High Tech Institute trained Admissions Representative Faith Perdue to enthusiastically say to each prospect: "I know that we can help you!!! (Perdue Depo., pp. 194:17-195:1).

122. High Tech Institute specifically trained Admissions Representative Faith Perdue to attempt to get the consumer potential student enrollee to not make an intelligently-stimulated decision, but instead to make an emotional decision, come in for a face-to-face meeting, and enroll that same day in High Tech. (Perdue Depo., pp. 195:2-196:9).

123. Admissions Representative Faith Perdue was taught by High Tech to sell the school through trying to draw an emotional response out of the prospective student, and that is what she did. (Perdue Depo., p. 271:8-15).

124. High Tech Institute trained Admissions Representative Faith Perdue in handling objections and in keeping control of the interview with the prospective student enrollee. (Perdue Depo., pp. 197:21-198:13).

125. Faith Perdue does not recall any instructions from High Tech with regard to obtaining student signatures on enrollment documents other than those set forth in the training manual. (Perdue Depo., pp. 202:19-203:8, 203:24-204:2).

126. Faith Perdue was never made aware of any policies at High Tech regarding what to do if she became aware of a student complaint. (Perdue Depo., p. 220:13-21).

127. The charges from High Tech for tuition and books for Jody Hendrix' Associates of Applied Science Degree in Criminal Justice was \$24,904. (Perdue Depo., p. 224:13-225:8)

128. Faith Perdue was trained by High Tech to go over the "benefits" of attending High Tech and referencing jobs and income. (Perdue Depo., pp. 235:16-236:6).

129. Faith Perdue was trained by High Tech in how to close the sale. (Perdue Depo., p. 236:15-17).

130. Faith Perdue acknowledged that a potential student should be able to trust their High Tech Admissions Representative as a counselor/advisor who is looking out for their best interests. (Perdue Depo., p. 239:1-5).

131. Faith Perdue acknowledged that a potential student should be able to trust what he or she is told by their High Tech Admissions Representative. (Perdue Depo., p. 239:11-15).

132. Faith Perdue acknowledged that a potential student should be able to rely on what he or she is told by their High Tech Admissions Representative. (Perdue Depo., p. 239:16-20).

133. High Tech trained Faith Perdue that prospective students would be relying on the information she provided them during enrollment. (Perdue Depo., p. 240:3-6).

134. Faith Perdue acknowledged that the Admissions Representative at High Tech has much greater knowledge and more information than the prospective students who are coming in to talk to them. (Perdue Depo., p. 239:6-10).

C. **High Tech Has Operated Through A Pattern and Practice of Fraud and Deception**

135. From April of 2008 until February of 2011, Marilyn Knight was Campus President for High Tech Institute – Kansas City. From July of 2007 to April of 2008, Ms. Knight was the Director of Education overseeing all academic programs at High Tech Institute – Kansas City. She was the Program Manager for the Medical Billin & Coding Program at High Tech Institute – Kansas City from May of 2004 until July of 2007, and she taught courses at the school from September of 2003 until May of 2004. (Knight II Depo., pp. 31:24-35:6).

136. While she was Campus President, the school changed its name from High Tech Institute to Anthem College. This was an overall corporate change in which many locations previously called “High Tech Institute” were changing their name to Anthem College. The change was a name-change only, and nothing change in operations or personnel. (Knight I Depo., pp. 20:24-23:8).

137. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight admitted that High Tech Institute operated through a pattern and practice of misinformation coming from its Admissions Representatives since its inception in 2003 in Kansas City. (Knight II Depo., pp. 315:24-316:9).

138. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight admitted that High Tech Institute – Kansas City’s Admissions Representatives were prone to lie to potential new students. (Knight II Depo., pp. 144:8-11). She does not remember the number of times she talked with Kansas City Admissions personnel about the misinformation being fed to potential students, but she did not ever document any of those conversations. (Knight II Depo., pp. 144:12-145:1).

139. Former High Tech/Anthem College Campus President and Director of Education

Marilyn Knight admitted that High Tech/Anthem had Student Critique forms completed by every student at the end of every class – which at High Tech/Anthem is every 30 days. (Knight II Depo., pp. 44:21-45:19).

140. The Student Critique form asked the current student to evaluate the teacher on page 1, but it asked questions on pages 2 and 3 about other aspects of the school. Included in these is question 2 on part 2 which asks the current student whether he/she has found the school to be as it was represented when he/she enrolled. (Knight II Depo., pp. 45:20-46:13, 167:5-168:4).

141. The completed Student Critiques are reviewed by the Campus President, the Campus Director of Education, and the Program/Department Chair. (Knight II Depo., pp. 48:22-25, 51:22-52:6, 129:1-7, 160:9-168:21). Some of the Student Critique responses were communicated by Marilyn Knight to High Tech/Anthem's Home Office. (Knight II Depo., pp. 65:22-67:1). Concerns expressed on the Student Critique responses with regard to misrepresentations made by High Tech Admissions Representatives are claimed to have been shared with the Director of Admissions, but there was never any documentation. (Knight II Depo., pp. 66:20-67:16). Former Campus President and Director of Education Marilyn Knight said she did not document any follow-up to a Student Critique complaint because the company's Home Office did not tell her to do so. (Knight II Depo., p. 183:4-21).

142. The Student Critique responses provide knowledge to High Tech of how current students believe the school was represented to them and on how the school was being operated. (Knight II Depo., pp. 194:23-195:3).

143. The following highlights are contained in Exhibit 12 and are just some of the complaints received by High Tech Institute – Kansas City from then-current Criminal Justice on Student Critique forms. These complaints included those regarding misrepresentations from High

Tech Admissions Representatives regarding job placement, starting salary, credit transfer, externships, and other matters. (Knight II Depo., pp. 226-247, Ex. 12).

144. The above complaints exist despite the fact that Defendant has only produced the Student Critiques for a tiny fraction the Criminal Justice Program classes, with the others, mysteriously, not able to be located. Defendant has failed to produce the Student Critiques for nearly all of the classes attended by Plaintiff Jody Hendrix and Plaintiff Marcus Champion. Defendant has failed to produce virtually any Student Critiques for the time period in 2007 and 2008 while Mr. Hendrix and Champion were in school.

145. The following highlights are contained in Exhibit 13 and are just some of the complaints received by High Tech Institute – Kansas City from then-current Surgical Technology Program students on Student Critique forms. These complaints include such comments as “shady;” “many things are not as I was told when being sold on the school;” “Recruiter either didn’t have the knowledge or wasn’t honest about certain aspects of my training;” “The recruiters seem to be more interested in getting you in than telling you the whole truth;” and, “they lied.” These complaints included those regarding misrepresentations from High Tech Admissions Representatives regarding job placement, starting salary, credit transfer, externships, and other matters. (Knight II Depo., pp. 247-313, Ex. 13).

146. The above complaints exist despite the fact that Defendant has only produced the Student Critiques for a tiny fraction the Surgical Technology Program classes, with the others, somehow, not able to be located.

147. On almost a monthly basis between 2003 and 2011, High Tech Institute – Kansas City received forms back from students expressing that the school had been misrepresented at the time of enrollment. Despite hundreds of such complaints of fraudulent misrepresentation,

High Tech did nothing to investigate or stop the fraud and deception. Exhibit 14 is entitled Index #1 of Example Student Critique Complaints of Fraud/Deception and contains summaries of 130 student complaints of fraud and misrepresentation committed by High Tech at the time of enrollment. Exhibit 15 is entitled Index #2 of Example Student Critique Complaints of Fraud/Deception and contains summaries of more than 250 other student complaints of fraud and misrepresentation committed by High Tech at the time of enrollment.. Exhibit 16 is entitled Index #3 of Example Student Critique Complaints of Fraud/Deception and contains summaries of more than 75 other student complaints of fraud and misrepresentation committed by High Tech at the time of enrollment.

148. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) The Arizona Home Office of High Tech/Anthem College actually made all major decisions for the Kansas City Campus. (Knight II Depo., p. 39:12-24). The Campus Presidents receive an enrollment budget from Home Office, and they are required to meet those enrollment numbers or face possible employment repercussions. (Knight I Depo., p. 49:5-9). High Tech/Anthem's Home Office placed high pressure student enrollment/sales expectations on its Campus Presidents. (Knight II Depo., pp. 69:2-72:22). The Campus Presidents, in turn, require their Directors of Admissions (Sales) meet those enrollment budgets or face employment consequences. (Knight I Depo., pp. 49:10-23, 54:24-6).
- (b) The Admissions Representative's job is to obtain adequate enrollment

production to meet the school's objectives. (Knight I Depo., pp. 115:22-116:6). High Tech Admissions Representatives are disciplined and terminated for failing to meet the enrollment quotas provided to them. (Knight I Depo., pp. 55:7-56:20, 57:16-58:3). High Tech, however, has never reprimanded an Admissions Representative for providing misinformation to a prospective student or students. (Knight I Depo., p. 73:16-22).

- (c) High Tech trained its personnel to assume fake identities and to then go to other schools and act interested in those schools so as to bring back information and materials to High Tech. (Knight II Depo., p. 40:3-41:20). High Tech/Anthem College's Home Office personnel also engage in these activities of assuming fake names and getting materials from other schools under false pretenses. (Knight II Depo., pp. 85:20-87:17, 96:17-97:9).
- (d) High Tech/Anthem's Home Office did not direct Marilyn Knight or others at High Tech Institute – Kansas City to document student complaints in writing, and Ms. Knight agrees it would have been a good idea for Home Office to have had such a requirement. (Knight II Depo., pp. 67:17-68:3; Knight I Depo., pp. 96:21-97:15). There were, however, no written guidelines, policy, or procedure that tell an employee of High Tech that they should go to the director of admissions when a prospective student, student, or graduate comes to them with a complaint about misinformation from admissions. (Knight I Depo., pp. 95:21-96:10). There were no written guidelines noting that a student complaint about misinformation provided by admissions should be memorialized in a written document. (Knight I Depo., p. 96:11-20). There

were no unwritten protocols or procedures at High Tech/Anthem College for handling complaints from prospective students, students, or graduates about misinformation provided to them by High Tech Admissions Representatives. (Knight I Depo., p. 97:16-20).

- (e) In March of 2008, a High Tech Institute – Kansas City Admissions Representative name Briza Handley sent an email to all at the Kansas City Campus noting her resignation and also noting that she cannot continue to mislead students. Her email further notes that the school is lacking in ethics and that there is stress in trying to meet sales goals placed on admissions staff. Nothing was done by High Tech to follow up on this email from an outgoing sales person in Kansas City or to investigate any of the issues raised therein. (Knight II Depo., pp. 150:2-154:12).
- (f) In February of 2009, a former student who attended in 2007 complained in writing that he was misadvised by his High Tech Institute – Kansas City Admissions Representative who told him that his credits would transfer to other schools. He also complained that lab supplies were so short that students were having to go to trash cans to try to find lab supplies. (Knight II Depo., pp. 154:13-159:25).
- (g) In 2011, High Tech/Anthem College's Home Office again became aware that several students felt their Kansas City Admissions Representatives lied to them when they enrolled. Nothing was again done to terminate or discipline the offending Admissions Representatives. (Knight II Depo., pp. 125:2-14, 127:8-128:15, 129:14-134:8). The Home Office response in not terminating

offending Admissions Representatives was inappropriate and shows that High Tech/Anthem College does not care that its students are being lied to in order to get them to enroll. (Knight II Depo., pp. 133:6-134:8).

- (h) In 2011, High Tech/Anthem College's Home Office acknowledged that many students in the Surgical Technology Program at Kansas City had been lied to by their High Tech Admissions Representatives. (Knight II Depo., pp. 135:3-136:12, 137:16-141:17, 145:2-147:12).

149. In an April, 2008 First Amended Complaint, 38 former students from High Tech Institute – Kansas City alleged Defendant engaged in a pattern and practice of fraud and deception, claiming also that their Admissions Representatives had committed fraud and deception with regard to job placement, starting pay, credit transfer, and other matters. Many of the plaintiffs in this Fallo case were from the Surgical Technology Program. (Knight I Depo., pp. 73:23-74:14, 75:21-76:19, 80:14-81:11, 87:25-89:9).

150. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted that High Tech/Anthem College's Home Office had provided no policy or procedure saying an Admissions Representative is not to tell prospective students that credits will transfer to other schools and universities. (Knight I Depo., p. 85:4-85:21).

151. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted that High Tech/Anthem College's Home Office in Arizona did not provide adequate resources to run the Kansas City Campus, to supply the classrooms and various programs, or to oversee the admissions personnel for compliance at the Kansas City Campus. (Knight II Depo., pp. 75:19-77:11, 79:8-23). For example, the instructor who also served as librarian was told that he could order one book or so a month for the High Tech Institute – Kansas

City library, which is in a tiny little room. (Knight II Depo., pp. 122:24-124:13).

152. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted that High Tech and its Admissions Representatives have more and greater information about careers and about the school than does the potential student enrollee. (Knight I Depo., p. 64:10-16).

153. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted that a prospective student should be able to trust what he or she is told by a High Tech Admissions Representative prior to enrollment. (Knight I Depo., p. 64:17-24).

154. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted that a prospective student should be able to rely on what he or she is told by a High Tech Admissions Representative prior to enrollment. (Knight I Depo., pp. 64:25-65:6).

155. Karen Matthews was employed as the Director of Admissions by High-Tech Institute at the Kansas City, Missouri location from approximately April 23, 2007 to October 8, 2007. Karen Matthews attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) While employed as Director of Admissions, High-Tech Institute placed extreme pressure on Ms. Matthews on the Admissions Representatives to meet High-Tech Institute's unreasonable student enrollment expectations.
- (b) The corporate officials at High-Tech Institute were strict about having the school terminate Admissions Representatives who did not meet the student enrollment quotas set by the corporation. This placed the Admissions Representatives in the position of having pressure on them to tell false things and make false promises in order to make a sale and meet their quotas.
- (c) At the same time as it was placing such pressure on admissions, High- Tech Institute had inadequate institutional compliance controls or guidelines. Based on my observations during my time period at High-Tech Institute, the

corporation's training and oversight of admissions personnel was neither reasonable nor adequate.

- (d) High-Tech Institute school facilities in Kansas City were sub-par. Both its faculty and the supposed "education" being provided did not seem to be legitimate. Director of Admissions Matthews witnessed from the upper management at High-Tech Institute a total concern for the money bottom line and a total lack of concern for educational quality or true career outcomes for the school's students and graduates.
- (e) Ms. Matthew learned while working as Director of Admissions at High-Tech Institute that High-Tech Institute Admissions Representatives often made a "convenient" misrepresentation in claiming that national accreditation such as that held by High-Tech Institute was a good thing and that it meant that all of your credits would transfer to any other college anywhere else in the country. Ms. Matthews notes that such a statement to prospective students by High-Tech Institute Admissions Representatives would be deceptive and likely untrue.
- (f) Was not initially told by High-Tech Institute locally or nationally that the school was on probation with its accrediting body or that High-Tech Institute lost its degree granting authority from that accrediting body. Instead, Director of Admissions Matthews first learned of High-Tech Institute's loss of degree granting authority from a new student's parent. This parent had somehow learned through their own independent investigation about High-Tech Institute's accreditation and degree-granting authority problems.
- (g) After she discovered that High-Tech Institute at the Kansas City location and elsewhere had lost its degree granting authority, Director of Admissions Karen Matthews went into Kansas City Campus Director Erin Cunningham's office and told her how upset she was to learn about this. She advised Ms. Cunningham that the school should have told her as Director of Admissions, and that it should also have told the other employees and the students and prospective students. In response, Ms. Cunningham screamed at Karen Matthews that it was none of her business or anyone else's business about the accreditation issues. This High-Tech Institute Campus President then said that this was not going to be used as an excuse for Ms. Matthews not to hit the enrollment numbers that had been set for her as Director of Admissions.

(Affidavit of Karen Matthews, Ex. 1).

156. Willis Zoellers was employed as an Agency Admissions Representative by High-Tech Institute at the Kansas City, Missouri location for approximately nine months in 2008.

Mr. Zoellers attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) While employed as an Admissions Representative at High-Tech Institute, there was extreme pressure placed on Mr. Zoellers and other admissions personnel to meet unreasonable student enrollment expectations.
- (b) Mr. Zoellers had a quota of five enrollments per month as an agency admissions representative. If he did not meet my quota of five, there would be an oral discussion with the director of admission who would tell him he needed to meet his quota or be terminated.
- (c) There were several admissions representatives who were terminated for not meeting the quotas assigned.
- (d) High-Tech Institute trained Mr. Zoellers and other admissions representatives to "enroll for the next start," and there was typically a start every 2-4 weeks or so.
- (e) Overall sales process Mr. Zoellers was trained in included first getting the prospective student to come to the High-Tech Institute location for an in-person interview. High-Tech admissions representatives are trained to be ready to receive a volume of calls during shows such as Jerry Springer because of the commercials the school runs during those shows. The representatives are trained not to provide information regarding the costs of the program over the phone, but instead to deflect such questions and get the prospective student to come to the school in-person.
- (f) Once the prospective student arrives at the school, the first thing is the interview, followed by a power point presentation, and then the tour. The power points were by program, included audio and video, and were approximately 5-10 minutes in length. Salary ranges were included in the power points, and admissions reps were trained to stress the high end of the ranges provided.
- (g) During the tour, the prospective student was brought by the lobby, the campus president's office, the financial aid "wizards," students services, and graduate placement. At each of these stops, the prospective student was to be introduced to someone who would have a 30 second or so sales pitch to make. At the career placement stop on the tour, the typical sales pitch from someone in that office was to say – "our graduates are all doing great," that "all are happy and working in their field," and that "all are placed in their field for sure."

- (h) High-Tech Institute trained Mr. Zoellers and other admissions representatives to, during the entire process, find "hot buttons" and "create a sense of urgency."
- (i) At the end of the tour, the admissions representatives at High-Tech Institute were trained to say "What do you think?"; "When can you start?"; and "We've got classes starting as soon as . . ." They were trained to say that there were only two spots left and to look at our appointment books and indicate that they had several appointments coming up with people who were likely to fill those two spots.

(Affidavit of Willis Zoellers, Ex. 2).

157. Witness Lynn Magenheimer was employed as an enrollment processor in Admissions at High-Tech Institute in Kansas City, from approximately February of 2005 to November of 2005.

Ms Magenheimer attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) Ms. Magenheimer attended weekly meetings with the President and other administrators (admissions director, financial aid director, and others). Each High-Tech Institute admissions representative would come in one-by-one and report to the group about the prospects he/she was recruiting. The representative would say whether or not he/she had accomplished the goal for enrollments that was provided to him/her by the school. There would be added pressure on the school in general if enrollments were down and on the individual representative if he/she didn't have confirmed starts for each session.
- (b) From these meetings and her experience at High-Tech Institute, it was clear to Ms. Magenheimer that admissions was "sales." They worked leads and used scripts. The school encouraged the admissions people to re-contact prospective students and to get their enthusiasm up. The admissions representatives were to get the prospective student on campus and not to answer questions on the phone if at all possible. If a student was not scheduled to start immediately, the admissions representatives were encouraged during the weekly meetings to contact the enrolled student frequently until their start date. When a prospective student missed a financial aid meeting or they had concerns about the student arranging transportation, they were encouraged to have them return to campus.

(Affidavit of Lynn Magenheimer, Ex. 3).

158. Witness Juli Kay Atkinson was employed by High-Tech Institute at the Kansas City, Missouri location from March 29, 2004 to October 5, 2008. She was a massage therapy instructor from March 29, 2004 until August 9, 2004, at which time she became the MT299 Massage Clinic Supervisor. During some of this time period, she was also lead instructor and acting program manager. Ms. Atkinson attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) While employed at High-Tech Institute, Ms. Atkinson heard admissions representatives tell prospective students that they would make between \$40 and \$80 per hour upon graduation from the school's massage therapy program.
- (b) She advised the admissions department and other personnel at High-Tech Institute that they were not accurately representing massage therapist pay in what they were telling prospective students. She prepared a business earnings profile for massage therapists so as to accurately set forth some of the job and earnings possibilities. The business earnings profile was distributed to faculty and administration, but was not provided to prospective students prior to their enrollment in High-Tech Institute. What she prepared was not well received by the administration because the potential earnings numbers were much lower than the unrealistic ones that admissions had been telling prospective students.
- (c) Observed that admissions at High-Tech Institute was totally sales-driven. She observed an admissions representative named Debra being trained to tell students false information regarding how much they were going to make upon graduation. She then heard this same Debra tell prospective students over and over again that they would be making \$80 per hour as a massage therapist upon graduation. At one point in an in-service meeting, she told Campus President Joan Ellison, with Debra and all the other faculty and staff present, that admissions personnel needed to start telling prospective students the truth if the school wanted students to trust admissions personnel.
- (d) While employed at High-Tech Institute, she also heard admissions representatives tell prospective students during the tour – "your credits will transfer . . . you'll get a degree."

(Affidavit of Juli Kay Atkinson, Ex. 4).

159. Witness Mark Pelmore previously served as an instructor at Anthem College in

Kansas City, formerly known as High-Tech Institute. He taught at Anthem/High-Tech during the years 2007 through 2011. Mr. Pelmore attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) He heard over and over again students talking about what Anthem/High-Tech's admissions representatives had told them, including that their credits would transfer from Anthem/High-Tech to other local public universities, community colleges, and private colleges and universities. He heard these matters from students during the entire time period he worked at Anthem/High-Tech.
- (b) Observed that many incoming students had been led to believe that their job placement and starting salary prospects were much higher than reality. Mr. Pelmore observed this during the entire time period I worked at Anthem/High-Tech.
- (c) He witnessed from upper management in administration meetings a lack of concern for education and a total concern for student enrollment numbers and profits. "Fill the seats" was a phrase Mr. Pelmore heard often from upper management at Anthem/High-Tech. There was also a push from upper administration to make sure new students showed up for the first two weeks because more monies could be retained by the school at that point. There was pressure placed by upper administration on instructors to pass students so that the seat remained filled and money kept flowing in to the school.

(Affidavit of Mark Pelmore, Ex. 5).

160. Witness Dawn Bennett previously served as an instructor at Anthem College in Kansas City, formerly known as High-Tech Institute. She taught at Anthem/High-Tech from approximately January of 2010 to February of 2011. Ms. Bennett attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) She recalled many students were upset to find out during school that their Anthem/High-Tech credits would not transfer to many other colleges and universities. Those students in her classes indicated to Ms. Bennett that they believed their Anthem/High-Tech credits would transfer because their admissions representatives had told them when they enrolled that the Anthem/High-Tech credits would transfer to all other colleges and universities.

- (b) She observed that many students had misconceived notions about job availabilities and the salary/pay they could expect to make upon graduation. Ms. Bennett observed that several students had misconceived notions about the job market conditions and prospects, as well as the time period it would take to obtain employment. The students advised her that they received these misconceived notions about job availability and salary/pay from admissions personnel at Anthem/High-Tech.

(Affidavit of Dawn Bennett, Ex. 6).

161. Witness Jennifer Lewis was previously employed at High-Tech Institute in Kansas City from approximately June of 2003 to December of 2007. She was employed as an instructor, and she taught many different courses including anatomy & physiology and all of the massage modalities. Ms. Lewis attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) She observed that several students had misconceived notions about the salary or pay they could expect to make upon graduation from the massage therapy program as well as about the job market conditions and prospects. The students advised Ms. Lewis that they received these misconceived notions about the salary or pay from admissions personnel at High-Tech Institute.
- (b) Ms. Lewis' observation and experience was that the school at High-Tech Institute was more interested in profits than academics and that students were considered to be "body counts" – a term she heard used by High-Tech Institute personnel to refer to students.

(Affidavit of Jennifer Lewis, Ex. 7).

162. Defendant trains its Admissions Representatives to overcome the objections of the potential student. (Lang Depo., p. 34:10-13).

163. Defendant also trains its Admissions Representative to uncover the "hot buttons" of the potential students and in "closing techniques" in order to get them to sign the Application and enrollment paperwork on the same day as their first in-person visit to Defendant's school. (Lang Depo., pp. 77:20-78:11, 80:17-23, 81:21-82:1, 102:9-103:24; Payne Depo., pp. 34:10-37:19, 40:11-

41:1).

164. Defendant's practices result in high-pressure sales tactics, as Defendant was illegally basing the pay increases of its Admissions Representatives on the number of students those Admissions Representatives enrolled. (Lang Depo., pp. 73:10-76:22, 75:17-20, 85:19-89:25).

165. With further regard to Defendant's greater bargaining power, knowledge, and strength, Defendant High-Tech Institute's Admissions Representative Training Manual notes as follows regarding its potential students/customers:

"Characteristics of our typical student:
 Single parent.
 Economically disadvantaged.
 Unemployed or underemployed
 Individuals that lack an outside support system
 Low Self Confidence
 Low Self Esteem"

(Ex. 9; Perdue Depo., p. 163:5-16).

166. Defendant trains its Admissions Representatives to gain the trust of the prospective student/customer. (Lang Depo., pp. 205:6-212:18; Payne Depo., p. 59:4-13). Defendant's training manual instructs its Admissions Representatives as follows: "The more you know about the individual and their challenges, the better the chance of gaining their commitment and trust." (Ex. 9, Day 3).

167. Overall, Defendant trains its admissions personnel to try their best to not get any intelligent decision-making or thoughtful career analysis to be undertaken by their prospective students/customers. In this regard, Defendant's training manual provides as follows:

"In some cases, there may not be much forethought prior to making the call. Studies show that most consumer buying decisions are not intelligently stimulated, but emotionally and these decisions come and go, most of the time in a matter of moments. With this in mind, time can be our worst enemy unless we understand how to use it wisely. Knowing that an inquiry can 'cool' very quickly, we must be able

to not only schedule the appointment on the first call, but be sure that we are actually face-to-face with the individual within 24 hours.

(Ex. 9, Day 2; Payne Depo., pp. 41:2-25; Lang Depo., p. 140:7-22).

168. Once face-to-face, emotional hot buttons of the prospective student/ customer are pushed and the hard selling starts, with the Defendant's Admissions Representatives trained to get the prospective student/customer to sign the enrollment agreement at their first meeting. (Ex. 9, Day 3; Payne Depo., pp. 43:13-22; Knight I Depo., pp. 125:8-126:17).

169. Deborah Lang was a High-Tech Institute Admissions Representative at Kansas City for several years, and she also served as Director of Admissions for a period of time. (Lang Depo., pp. 8, 94-99). Ms. Lang admitted in her deposition that she was trained by High-Tech Institute that the school's credits would transfer to community colleges. (Lang Depo., p. 31:22-25). She also admitted she was trained by High-Tech Institute that the school's credits would transfer to other nationally-accredited schools. (Lang Depo., p. 29:1-10). Ms. Lang was not trained by High-Tech Institute on the large number of area colleges that won't even consider credits from nationally-accredited schools such as High-Tech Institute/Arthem College for transfer. (Lang Depo., p. 26:1-29:10).

D. Additional Evidence Regarding High Tech's Practices and Processes For Obtaining Student Signatures On Enrollment Paperwork

170. High Tech Institute - Kansas City's Admissions personnel were trained to enroll the student in the very next start that exists for the program, and that can sometimes be the next week, as High Tech starts new classes and students each month. (Knight I Depo., pp. 61:2-62:22). As noted above, they were also trained to enroll the prospective student on the very first visit.

171. High Tech Institute - Kansas City's Admissions personnel were also trained to tell the student that they will sit down and explore the best career opportunities for them and to gain their

trust. (Knight I Depo., pp. 63:8-64:9).

172. Defendant High-Tech Institute procures signatures on its form enrollment agreements and other forms through a series of institutionalized and uniform frauds. These frauds included requiring prospective student to sign the following false statement which was included in each and every one of the form enrollment agreements created by Defendant for Plaintiff and others: “. . . I certify having received an exact copy of this agreement and a copy of the school catalog . . .” (Lang Depo., pp. 34:24-36:15, 42:11-44:4).

173. Despite the fact that Defendant includes this statement in the form Application of Plaintiff and all other students, Defendant’s training guidelines for admissions representatives show it never provides a copy of its school catalog to a prospective student prior to enrollment. Indeed, Defendant’s training guide for its admission representatives notes as follows:

“If after a lead call, the result of the phone call required the rep to send some information to the prospect, the rep should only send a brochure not a catalog. Catalogs are only to be handed out to students once they are enrolled.” (Day 2)

“Again, it is very important that potential students are never shown a catalog during the interview process, or at any time prior to enrollment. Students receive a catalog at enrollment, but have never seen one prior to. This also means that catalogs are never sent in the mail to prospects as a means of giving them information about the school. The only exception to this policy would be for Agency Representatives, at the specific request of an Agency.” (Day 3 of Training)

(Ex. 9 – Excerpts from Defendant’s Admissions Representative Training Manual; Knight I Depo., pp. 114:22-115:12).

174. Defendant High Tech’s admissions training and practices in this regard were directly contrary to the requirements of its Accrediting body which noted as follows: “The school must provide the student with a current and complete catalog prior to signing the enrollment

agreement.” (Lang Depo., pp. 34:24-36:15, 42:11-44:4). Defendant High Tech’s Admissions personnel had never been trained on the appropriate admissions requirements of its Accrediting body, but instead were trained to do just the opposite by High Tech. (Lang Depo., pp. 34:20-36:15; 42:11-44:4, 127:11-128:9; Payne Depo., pp. 31:15-33:13). Only within the past year have Defendant’s Admissions personnel been trained that a prospective student can now get a catalog before they enroll – but only if they specifically request it. (Payne Depo., p. 27:7-25).

175. High Tech Institute – Kansas City has known from Student Critique form responses since at least July of 2007 that student enrollees do not actually read the entirety of enrollment contracts and other enrollment documents before signing or initialing. (Knight II Depo., p. 192:13-25).

E. High Tech’s Criminal Justice Program

176. Witness Cheryl Ann Stewart is a Kansas practicing criminal defense attorney who previously served as an adjunct instructor in the criminal justice program at High-Tech Institute in Kansas City. She taught at High-Tech Institute for approximately nine months in the 2005 to 2006 time frame. Ms. Stewart attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech in its Criminal Justice Program:

- (a) She observed that several students had misconceived notions about the types of jobs for which they would be qualified and the salary or pay they could expect to make upon graduation from the criminal justice program. She also observed that several students had misconceived notions about the job market conditions and prospects, as well as the time period it would take to obtain entry-level employment positions. The students advised her that they received these misconceived notions about the salary or pay from admissions

personnel at High-Tech Institute.

- (b) At one point during her time as an instructor at High-Tech Institute, Ms. Stewart noticed the marketing video that was played by the school for prospective students to view while waiting in the lobby of the admissions office. She also viewed this same video material on a television commercial for High-Tech Institute. She noticed that several of the criminal justice field careers discussed and depicted in that video were not ones for which the prospective student would be qualified to even apply for with an Associates Degree from High-Tech Institute.
- (c) After seeing this video, Ms. Stewart discussed it with the head of the Criminal Justice Program, Jack Phan. Mr. Phan agreed that the video was inaccurate in that it displayed jobs that the prospective student would not be able to obtain with the High-Tech Institute Associate's Degree. They both agreed that the school should not be showing it to potential students.
- (d) She had some students come to her disappointed to hear that none of their credits were going to transfer from High-Tech Institute to University of Missouri Kansas City (UMKC). These students indicated that they had been told by High-Tech's admissions representative that their High-Tech credits would all transfer to other colleges such as UMKC.

(Affidavit of Cheryl Ann Stewart, Ex. 7).

177. For a period of time, High Tech Graduate Placement only had a part-time person working in placement-related activities for the Criminal Justice Program. (Torres II Depo., p. 280:6-14).

178. Chuck Torres in High Tech – Kansas City’s Graduate Placement Department does not recall High Tech having anyone at the Kansas City Campus contacting prospective employers before there were graduates of the program. (Torres II Depo., pp. 282:7-283:2).

179. No graduate of High Tech’s Criminal Justice Program was ever employed as a court bailiff. (Torres II Depo., pp. 284:20-285:1).

180. No graduate of High Tech’s Criminal Justice Program was ever employed as a crime scene investigator. (Torres II Depo., p. 285:2-8).

181. No graduate of High Tech’s Criminal Justice Program was ever employed by the FBI. (Torres II Depo., p. 285:9-15).

182. No graduate of High Tech’s Criminal Justice Program was ever employed as a juvenile probation officer. (Torres II Depo., p. 285:16-21).

183. High Tech’s statistics do not support a representation that most graduates of the High Tech Criminal Justice Program were hired by the Kansas City Missouri Police Department. (Torres I Depo., p. 121:18-22).

184. High Tech’s former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that most of the graduates of High Tech’s Criminal Justice Program were hired by the Kansas City Police Department. (Reed Depo., pp. 31:21-32:2).

185. High Tech’s former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that High Tech Institute – Kansas City had professionals in the placement department who were connected to a network of potential employers for High Tech Criminal Justice Program graduates. (Reed Depo., pp. 32:14-33:1).

186. High Tech’s former Director of Graduate Placement/Career Service Erin Reed

testified that the only criminal justice industry employer she recalls that her advisors were in contact with was the Kansas City Community Center. (Reed Depo., pp. 33:21-34:8).

187. High Tech's former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment in government criminal justice positions. (Reed Depo., p. 34:9-15). High Tech Graduate Placement Manager Chuck Torres similarly knew of no facts to support the claim that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment in government criminal justice positions. (Torres I Depo., p. 122:10-15).

188. High Tech's former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment as Coast Guard crewmen, court bailiff, crime scene investigator, crime scene analyst, highway patrol officer, homeland security officer, park ranger, or security specialist positions. (Reed Depo., pp. 34:16-38:1).

189. High Tech's former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment as a probation officer. (Reed Depo., p. 37:6-10).

190. High Tech's former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment as a victim advocate. (Reed Depo., p. 38:2-6).

191. High Tech's former Director of Graduate Placement/Career Service Erin Reed

testified that she was aware of no facts to support the claim that the average starting salary for graduates of High Tech's Criminal Justice Program was between \$40,000 and \$50,000 per year. (Reed Depo., p. 38:7-13). High Tech Graduate Placement Manager Chuck Torres similarly knew of no facts to support the claim that the average starting salary for graduates of High Tech's Criminal Justice Program was between \$40,000 and \$50,000 per year. (Torres I Depo., p. 12:16-20).

192. High Tech's former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that credits earned at High Tech would transfer to all other colleges and universities. (Reed Depo., p. 38:14-19).

193. Erin Reed of High Tech's Graduate Placement can only identify one Criminal Justice Program graduate that the school actually assisted in placing them in their job. That person was a female who became employed at the Kansas City Community Center. (Reed Depo., pp. 23:17-24:18).

F. Additional Admissions From High Tech Graduate Placement Personnel

194. High Tech Institute has graduate placement and pay statistics broken down by diploma program versus associate's degree program, but it does not provide that information to prospective student. (Torres II Depo., pp. 310:4-8, 311:21-312:4; Torres I Depo., pp. 36:14-37:15).

195. High Tech Institute includes part-time jobs in its graduate placement and pay statistics, but it does disclose that to the prospective student. (Torres II Depo., pp. 312:5-313:10).

196. High Tech Institute classifies a student graduate as "placed by school" even when High Tech did not provide the job lead. (Torres II Depo., p. 313:20-25).

197. Chuck Torres and the Graduate Placement Department at High Tech – Kansas City have never deemed a job not to be either in the program field or a related field. (Torres II Depo., p. 317:2-16; Torres I Depo., pp. 157:17-158:25). Working as a direct store delivery associate at Wal-

Mart is deemed by High Tech to be employment in a related field to the Criminal Justice Program's Associate's Degree. (Torres I Depo., pp. 244:20-247:1).

198. High Tech Institute includes in its graduate placement and pay statistics person who are in the same job when they graduate as when they started at High Tech, but it does not disclose that to the prospective student. (Torres II Depo., p. 314:6-16).

199. In several of its "A Message From the Campus President" documents, High Tech failed to disclose entire period and groups of information. (Torres I Depo., pp. 52:3-6, 130:22-133:22, 135:17-136:8, 136:17-22, 138:24-139:21, 140:22-141:8, 141:15-143:7, 169-180, 210-215, 217).

200. Chuck Torres in Graduate Placement heard complaints from students regarding High Tech's credits not transferring and about salary misrepresentations made to them at the time of enrollment, but he did not document those complaints. He was never instructed to memorialize complaints such as those from students. (Torres II Depo., pp. 319:6-321:5).

201. Chuck Torres in Graduate Placement was never told of the harsh criticisms reported by so many students on their Student Critiques regarding the Graduate Placement Department and its ineffectiveness. (Torres II Depo., pp. 321-354, 431-464).

202. High Tech's Graduate Placement Department acknowledged that having an externship program is critically important in order for students to obtain quality employment. (Torres II Depo., pp. 414:21-416:2).

203. The Criminal Justice Program at High Tech Institute – Kansas City did not have an internship or externship program. (Torres II Depo., p. 416:3-8).

G. Evidence Regarding Non-Transferability Of High Tech/Anthem Credits

204. The catalogs for University of Missouri Kansas City for the years 2005 to the present make it clear that it only accepts credits on transfer from regionally-accredited institutions. (Exhibit 17).

205. The catalogs for William Jewell University in Liberty, Missouri for the years 2005 to the present make it clear that it only accepts credits on transfer from regionally-accredited institutions. (Exhibit 18).

206. The transfer of credit policies for Avila University in Kansas City, Missouri make it clear that it only accepts credits on transfer from regionally-accredited institutions. (Exhibit 19).

207. The catalogs for Central Missouri State for the years 2005 to the present make it clear that it only accepts credits on transfer from regionally-accredited institutions. (Exhibit 20).

208. The catalogs and policies for Northwest Missouri State for the years 2005 to the present make it clear that it only accepts credits on transfer from regionally-accredited institutions. (Exhibit 21).

H. High Tech's Probation and Loss Of Degree-Granting Authority

209. In January of 2007, High-Tech Institute's accrediting body noted that "the institutions were not in compliance with the Commission's standards governing faculty qualifications or the design and content of degree programs." (Ex.10, p. 1). The accrediting body also wrote that "the Commission has good cause to believe that these compliance concerns are systemic in nature." (Ex. 10, p. 1).

210. Further noted was the fact that 4 of the 7 general education faculty members at the Kansas City location "appear[ed] to lack appropriate academic coursework and preparation to teach the general education courses assigned to them." (Ex. 10, p. 6). With regard to the 18 full-time and

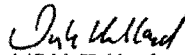
1 part-time faculty in the programs, High-Tech Institute's accreditor noted that one "does not have the requisite practical experience or training to teach" the course he was teaching, and that 8 of the other "faculty members have not earned or do not possess a degree related to the courses they are currently teaching and there is no showing of outstanding professional experience or contributions to the occupational field of study." (Ex. 10, p. 7).

211. Also noted in the Probation Order from the accreditors was the high number of instructors at the schools operated by High Tech across the country "who were awarded a degree credential from HTI, many under what appear to be similar circumstances" — a degree awarded to a current instructor in an amazingly short period of time. (Ex. 10, pp. 21-22, see also pp. 17-20 — "Integrity of Degrees Awarded Issues").

212. In an October 12, 2007 communication, High-Tech Institute's Accrediting body continued "the Probation Order for all HTI-affiliated schools." (Ex. 11, p. 1).

Respectfully submitted,

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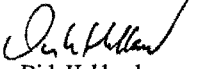
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was filed pursuant to the ECF system, this 12th day of August, 2013.


/s/ Dirk Hubbard
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.)	
Plaintiffs)	Case No.: 4:11-CV-00506-BP
)	
-vs-)	
)	
HIGH-TECH INSTITUTE, INC.)	
d/b/a ANTHEM EDUCATION GROUP)	
and HIGH TECH INSTITUTE)	
Defendant.)	

PLAINTIFF KELSEY DESANTO'S SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.)	
Plaintiffs)	Case No.: 4:11-CV-00506-BP
)	
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-vs-)	
)	
HIGH-TECH INSTITUTE, INC.)	
d/b/a ANTHEM EDUCATION GROUP)	
and HIGH TECH INSTITUTE)	
Defendant.)	

EXHIBITS TO
PLAINTIFFS' COMMON STATEMENT OF FACTS
REFERENCED IN
SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S TWO MOTIONS FOR SUMMARY JUDGMENT

- Exhibit 1 – Statement of Karen Matthews
- Exhibit 2 – Statement of Willis Zoellers
- Exhibit 3 – Statement of Lynn Magenheimer
- Exhibit 4 – Statement of Juli Kay Atkinson
- Exhibit 5 – Statement of Mark Pelmore
- Exhibit 6 – Statement of Dawn Bennett
- Exhibit 7 – Statement of Cheryl Ann Stewart
- Exhibit 8 – Statement of Jennifer Lewis
- Exhibit 9 – Excerpts From High Tech's Admissions Training Manual
- Exhibit 10 – ACCSCT 1/07 Probation Letter to High-Tech Institute
- Exhibit 11 – ACCSCT 10/07 Probation Letter to High-Tech Institute
- Exhibit 12 – Student Critique Form Complaints – Criminal Justice*
- Exhibit 13 – Student Critique Form Complaints – Surgical Technology*
- Exhibit 14 – Summary #1 of Student Critique Form Complaints*
- Exhibit 15 – Summary #2 of Student Critique Form Complaints*
- Exhibit 16 – Summary #3 of Student Critique Form Complaints*
- Exhibit 17 – Excerpt from UMKC Catalog Re: Transfer of Credits
- Exhibit 18 – Excerpt from William Jewell Catalog Re: Transfer of Credits
- Exhibit 19 – Excerpt from Avila Policy Re: Transfer of Credits
- Exhibit 20 – Excerpt from CMSU Catalog Re: Transfer of Credits
- Exhibit 21 – Excerpt from NWMS Catalog Re: Transfer of Credits* Exhibit to

be filed under seal as containing documents designated by Defendant as "confidential"

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.)	
Plaintiffs)	Case No.: 4:11-CV-00506-BP
)	
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-vs-)	
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HIGH-TECH INSTITUTE, INC.)	
d/b/a ANTHEM EDUCATION GROUP)	
and HIGH TECH INSTITUTE)	
Defendant.)	

DEPOSITION TRANSCRIPTS REFERENCED IN
PLAINTIFFS' COMMON STATEMENT OF FACTS
REFERENCED IN
SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S TWO MOTIONS FOR SUMMARY JUDGMENT

Appendix 1 – Deposition of Marcus Champion
Appendix 2 – Deposition of Jody Hendrix
Appendix 3 – Deposition of Kelsey DeSanto
Appendix 4 – Deposition of Kathy Carrier (Gharst)
Appendix 5 – Deposition of Faith Perdue
Appendix 6 – Deposition of Sandra Jones
Appendix 7– Deposition I of Marilyn Knight
Appendix 8 – Deposition II of Marilyn Knight
Appendix 9 – Deposition I of Charles Torres
Appendix 10 – Deposition II of Charles Torres
Appendix 11 – Deposition of Erin Reed
Appendix 12 – Deposition of Deborah Lang
Appendix 13 – Deposition of Terri Payne

COMES NOW Plaintiff Kelsey DeSanto, by and through counsel, and in opposition to Defendant High-Tech Institute, Inc.'s Motion for Summary Judgment, state as follows:

I. INTRODUCTION

Plaintiff in this case includes Kelsey DeSanto – a former student who attended the Kansas City location of High-Tech Institute/Anthem College in the Surgical Technology Program. High-Tech Institute/Anthem College is a for-profit, proprietary school owned by Anthem Education Group. Anthem Education Group currently owns and operates many for-profit school locations, including many locations known previously as High-Tech Institute which changed their school names to Anthem College. Over the period of time from 2003 to the present, this Kansas City location has offered a limited number of academic programs, most of which progress toward a “Diploma” or an “Associate of Applied Sciences” degree.

Plaintiff claims that Defendant engaged in a pattern and practice of fraudulent misrepresentations, material omissions, and deceptive conduct in order to sell its school's programs and in order to induce prospective students to sign enrollment contracts with the school. The admissions advisors and other staff at each High-Tech Institute/Anthem College location are expected to utilize a myriad of corporately-designed sales and marketing techniques in order to get a prospective student to enroll. Student recruitment at High-Tech Institute/Anthem College is driven by high-pressure sales techniques and strategies. The national corporate parent company makes the policies, provides the training, and sets the enrollment quotas for the admissions personnel at its schools. These sales persons are trained by corporate to induce the prospective student to sign up for the program that makes the most money for the school. They are trained to create a “sense of urgency,” to “overcome objections,” to gain the trust of the prospective student, and where possible to sign the prospective student up on the first in-person visit. These sales persons are provided

explicit training from Defendant in how to close the sale and enroll students in the few and limited programs offered at the Kansas City location.

The pattern and practice of misconduct perpetrated by Defendant involves fraudulent misrepresentations and material omissions relating to topics such as (a) job placement services provided by the school upon graduation; (b) job demand and job prospects for High-Tech/Anthem program graduates; (c) starting salary for High-Tech/Anthem program graduates; and, (d) transferability of High-Tech/Anthem credits to other colleges and universities.

As to Plaintiff DeSanto, Defendant engaged in specific fraudulent misrepresentations which are set forth as to each Plaintiff in Count I and which were set forth in her deposition. Defendant also failed to disclose several key material facts, and these material and fraudulent omissions are also set forth in Count I. Specifically, Ms DeSanto claims High Tech's Admissions Representative misrepresented (a) that credits transfer (DeSanto Depo., pp. 70:12-71:16), (b) about job placement prospects, percentages and type of job opportunities working in surgeries in hospitals (DeSanto Depo., pp. 73:16-74:2, 112:8-18, 113:21-116:25, 162:14-163:20), (c) and about starting pay (DeSanto Depo., pp. 87:7-17, 113:21-114:11).

Count II alleges that this corporate Defendant engaged in deceptive conduct in violation of the Missouri Merchandising Practices Act (MPA). Judge Wright dismissed that Count on the pleadings based on his view that the product purchased from a for-profit school qualified for the "business pursuits" exception to the MPA because some of the alleged misrepresentations related to job placement, job prospects, and starting salaries. According to Judge Wright's Order, these unwary student enrollees at High Tech do not qualify for the consumer protection laws in Missouri because High Tech misled them with regard to some matters related to jobs. His Order noted that if the majors were something like Art History, then the business pursuits exception would not apply.

Plaintiff disagrees with Judge Wright's Order and would request the Court to reexamine that ruling in light of the facts now fully set forth in this matter in Plaintiffs' Common Statement of Facts. Those facts show this to be exactly the type of situation that the MPA was designed to prevent. In any event, Plaintiffs' MPA claims have presently been dismissed, subject to the Court's possible Order reinstating them.

Count III alleges Defendant was negligent in the training and supervision of its admissions personnel, and Count IV alleges breach of contract. As explained more fully in the argument section below, Plaintiff DeSanto believes her evidence is sufficient to have those claims submitted to the jury, but she is dismissing those claims in the interest of focusing this matter on the intentional and fraudulent conduct engaged in by Defendant.

Defendant High Tech Institute has filed a Motion for Summary Judgment which addresses some, but not all, of the Count I fraud claims asserted by Plaintiffs DeSanto. Defendant's Motion also does not accurately characterize Plaintiff's claims or the evidence. Indeed, when the Court consider Plaintiff's controversions of Defendant's factual contentions as well as the extensive additional facts provided in Plaintiffs' separately-filed Statement of Common Facts, Defendant's Motion with regard to Plaintiff's fraud claims should be denied based on the factual disputes alone. In addition, denial of Defendant's Motion for Summary Judgment on Plaintiff's fraud claims is directly supported by several prior orders of Missouri State Courts and of United States District Courts in the Western District of Missouri.

II. PLAINTIFF'S RESPONSE TO DEFENDANT'S ALLEGED UNCONTROVERTED FACTS AND PLAINTIFFS' STATEMENT OF FACTS GENUINELY IN DISPUTE WHICH DEFEAT SUMMARY JUDGMENT

Defendant's Motion does set forth an accurate or complete statement of facts regarding the claims and evidence of Plaintiff DeSanto. Thus, Plaintiff has separately filed an accurate and more

complete statement of the true facts revealed in the discovery process in this case. Plaintiff incorporates herein by reference her separate Common Statement of Facts Referenced in Suggestions in Opposition to Defendants' Two Motions for Summary Judgment. Those facts make it clear that all of the fraud claims of Plaintiff DeSanto should proceed to trial and that Defendant's Motion for Summary Judgment on those fraud claims should be denied in its entirety.

In addition, Plaintiff responds to Defendant's specific alleged facts as follows:

1. Uncontroverted.
2. Uncontroverted.
3. Uncontroverted.
4. Uncontroverted with explanation that the documents were not read by Plaintiff before

signing because she trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (DeSanto Depo., pp. 64:18-65:12, 83:2-15, 89:19-25, 102:17-103:10, 109:23-110:5; SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166).¹ Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the

¹SF References are to paragraphs of facts and citations contained in Plaintiffs' separately-filed Common Statement of Facts Referenced in Suggestions in Opposition to Defendants' Two Motions For Summary Judgment.

enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

5. Uncontroverted with explanation that the documents were not read by Plaintiff before signing because she trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (DeSanto Depo., pp. 64:18-65:12, 83:2-15, 89:19-25, 102:17-103:10, 109:23-110:5; SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

6. Controverted. Ms. DeSanto did not testify that the entirety of the materials were read to her or that the materials were read accurately. the documents were not read by Plaintiff before signing because she trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (DeSanto Depo., pp. 64:18-65:12, 83:2-15, 89:19-25, 102:17-103:10, 109:23-110:5; SF ¶¶ 36, 43,

63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

7. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiff before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High

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8. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

9. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing

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16. Uncontroverted.

17. Uncontroverted.

18. Controverted. Ms. DeSanto was told that credits would transfer. (DeSanto Depo., pp. 70:12-71:16).

19. Controverted. Ms. DeSanto was guaranteed employment assistance and opportunities by High Tech. (DeSanto Depo., pp. 113:21-116:25, 118:4-8, 162:14-163:20). She was also told misleading placement percentages. (DeSanto Depo., pp. 73:16-74:2, 162:14-163:20; SF194-199). She was told jobs were being located for graduates by High Tech in hospitals such as Shawnee Missions Medical Center working in surgery. (DeSanto Depo., p. 112:8-18).

20. Uncontroverted that Ms. DeSanto testified she knew she would have to do her part.

21. Uncontroverted that Ms. DeSanto testified she knew she would have to do her part.
22. Uncontroverted that Ms. DeSanto testified she knew she would have to do her part.
23. Controverted. (DeSanto Depo., pp. 70:12-71:16).
24. Uncontroverted with explanation. It is clear that High Tech's credits will not transfer to any regionally-accredited institution such as UMKC or the Community Colleges. (SF ¶¶ 204-208).
25. Uncontroverted.
26. Uncontroverted.
27. Uncontroverted.
28. Uncontroverted.
29. Uncontroverted with explanation. High Tech's graduate experience showed a much lower starting salary..
30. Uncontroverted.
31. Uncontroverted.
32. Uncontroverted with explanation. The evidence is that High Tech's credits do not transfer, that their graduates do not get jobs located for them by the school, and that the average pay is not as high as High Tech stated initially to Ms. DeSanto.
33. Uncontroverted.
34. Uncontroverted.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate if, viewing the evidence most favorably to the non-moving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Thompson v. Hirano Tecseed Company, Ltd., 456 F.3d 805, 808 (8th Cir. 2006) (citing Fed.R.Civ. 56(c)). Summary judgment is not appropriate if the prima facie case

is supported by facts sufficient to raise a genuine issue for trial. Thompson, 456 F.3d at 808 (citing A.T. Turner v. Gonzales, 421 F.3d 688, 694 (8th Cir. 2005)).

In determining a motion for summary judgment the court must accept as true **all** facts presented by the non-moving party and supported by the record. Id. (citing Beck v. Skon, 253 F.3d 330, 332-33 (8th Cir. 2001)). If a “rational trier of fact could find for the nonmoving party” then the trial court must find that genuine issues of fact exist and that summary judgment precluded. Unleashed Innovations, Inc. v. Deltic Timber Corp., 2003 WL 22661159 *1 (8th Cir. 2003).

Defendant’s Motion does not meet the standard for being granted summary judgment under Rule 56(c).

IV. ARGUMENT AND AUTHORITY

A. Plaintiff’s Fraud Claims And Evidence Are Sufficient For The Jury’s Consideration (Responding to Pages 9-15 of Defendant’s Suggestions)

Defendant’s Motion for Summary Judgment does not fully set forth Plaintiff’s’ fraud claims or the evidence supporting those claims. It broadly argues that Plaintiffs cannot proceed with their misrepresentation claims because: (a) “for the most part, there is no evidence that anyone made the representations”; and, (b) “those representations were either true, not material, or were not believed or relied upon by DeSanto.” (Defendant’s Suggestions, pp. 9-10).

Defendant’s Motion should be denied, as Plaintiffs’ Statement of Facts and controversions above make it clear that there is evidence that the representations were made, that they were false, material, and that it was reasonable for Plaintiff to rely upon what was said by the High Tech Admissions Representatives and High Tech..

For years, High Tech Institute/Anthem College has engaged in a pattern and practice of dishonest and fraudulent business practices designed to mislead prospective students concerning what an education at this proprietary school will mean upon graduation. In Missouri and in the

Eighth Circuit the law has long held that common law fraud can be proven by demonstrating a pattern of similar conduct by the wrongdoer. Further and more specifically, in Missouri State and Federal Courts, claims by proprietary school students who have been defrauded and deceived with regard to job placement, starting salaries, credit transfer have long been deemed actionable. Indeed, Judge Wright previously denied Defendant's Motion to Dismiss which claimed much the same as Defendant's present Motion when it asserted that Plaintiffs' fraud claims were not actionable because they involved promised of future action to be engaged in by third parties. Judge Wright denied Defendant's claim, as such fraudulent conduct by for-profit colleges such as High Tech has been deemed actionable time and time again by many courts. Such claims of future conduct to be engaged in by third parties are actionable when there is a relationship of trust, when there is superior bargaining power, and when there is greater information known on the part of one of the parties. Each of those applies to Plaintiff's claims.

In their separately-filed Statement of Common Facts, Plaintiffs demonstrate to the Court that all of the misrepresentations made to them during and after the enrollment process were material and false, and that High Tech has made these same misrepresentations to other students before, during, and after their enrollment. The primary culprit in most of the fraudulent statements is the process utilized; however, high-pressure sales persons mislabeled as "admissions representatives" serve as the catalyst for an elaborate fraudulent scheme being perpetrated upon the public and the government. Time and time again, High Tech Admissions Representatives made identical misrepresentations to other prospective students concerning things like average starting salary, job placement, and transferability of credit hours. Plaintiffs' evidence further demonstrates a pattern and practice with regard to document signing by prospective students that is fraught with fraudulent and improper conduct on the part of High Tech. Telling is the fact that High Tech trains its Admissions Representative to never hand out or show a catalog to a prospective student enrollee until the

enrollment paperwork is signed, and yet that very enrollment paperwork states that the student has already received and reviewed the catalog. (SF ¶ 115).

Plaintiffs present compelling affidavits, documents and deposition testimony about the elaborate and well rehearsed fraudulent schemes that have been developed and implemented by High Tech's ownership to generate millions of dollars in student loan revenues on the backs of unsuspecting and poorly prepared students. Indeed, High Tech's former Campus President and Director of Education has admitted that High Tech – Kansas City operated through a pattern and practice of misinformation coming from its Admissions Representatives since its inception in 2003 in Kansas City and that the High Tech Admissions Representatives in Kansas City were prone to lie to new potential new students. (SF ¶137 and ¶138). Plaintiffs' evidence also includes hundreds and hundreds of similar complaints from other students. (SF ¶¶ 139-147, 148(e), 148(f), 148(g), 148(h), 149). Plaintiffs' evidence also includes direct admissions from the Admissions Representatives who enrolled Plaintiffs, as well as those who trained them. (SF ¶¶ 48-65, 98-134). Plaintiffs' evidence includes direct admissions and facts showing the falseness of the representations repeatedly made to these Plaintiffs and others by High Tech/Anthem. (SF ¶¶ 176-193, 204-208). Plaintiffs' evidence include direct admissions and facts showing High Tech's emotional manipulation of prospective students and its fraudulent practices with regard to obtaining student signatures on enrollment documents. (SF ¶¶ 122-123, 162-168).

Indeed, the High Tech Admissions Representative who enrolled one of the Plaintiffs in this case, Faith Perdue, admitted High Tech Institute specifically trained Admissions Representative Faith Perdue to attempt to get the consumer potential student enrollee to not make an intelligently-stimulated decision, but instead to make an emotional decision, come in for a face-to-face meeting, and enroll that same day in High Tech. (Perdue Depo., pp. 195:2-196:9). She also admitted she was

taught by High Tech to sell the school through trying to draw an emotional response out of the prospective student, and that is what she did. (Perdue Depo., p. 271:8-15).

Defendant claims Plaintiff has not shown the misrepresentations occurred, but Plaintiff has evidenced their specific alleged misrepresentations as well as pattern and practice of such. Ms DeSanto claims High Tech's Admissions Representative misrepresented (a) that credits transfer (DeSanto Depo., pp. 70:12-71:16), (b) about job placement prospects, percentages and type of job opportunities working in surgeries in hospitals (DeSanto Depo., pp. 73:16-74:2, 112:8-18, 113:21-116:25, 162:14-163:20), (c) and about starting pay (DeSanto Depo., pp. 87:7-17, 113:21-114:11).

Defendant claims Plaintiff should not have trusted or relied on what High Tech's Admissions Representatives said, but the testimony of High Tech officials is that students are expected to trust and rely on what is said by Admissions Representatives and that those Representatives have much more and greater information than the prospective student. (SF ¶¶ 63, 130-134, 152-154).

Defendant's reliance on its disclosures is factually and legally erroneous. First, none of those disclosures were knowing. Second, such disclosures are not legally valid to disclaim a fraud.

With further regard to the placement percentages shown to Kelsey DeSanto and other prospective students, Plaintiff's evidence is that Defendant was misleading and fraudulent in providing incomplete and inaccurate statistics. For example, High Tech Institute has graduate placement and pay statistics broken down by diploma program versus associate's degree program, but it does not provide that information to prospective student. (Torres II Depo., pp. 310:4-8, 311:21-312:4; Torres I Depo., pp. 36:14-37:15). High Tech Institute includes part-time jobs in its graduate placement and pay statistics, but it does disclose that to the prospective student. (Torres II Depo., pp. 312:5-313:10). High Tech Institute classifies a student graduate as "placed by school" even when High Tech did not provide the job lead. (Torres II Depo., p. 313:20-25). Further, Chuck Torres and the Graduate Placement Department at High Tech – Kansas City have never deemed a

job not to be either in the program field or a related field. (Torres II Depo., p. 317:2-16; Torres I Depo., pp. 157:17-158:25). High Tech Institute also includes in its graduate placement and pay statistics person who are in the same job when they graduate as when they started at High Tech, but it does not disclose that to the prospective student. (Torres II Depo., p. 314:6-16). Finally, in several of its "A Message From the Campus President" documents, High Tech failed to disclose entire period and groups of information. (Torres I Depo., pp. 52:3-6, 130:22-133:22, 135:17-136:8, 136:17-22, 138:24-139:21, 140:22-141:8, 141:15-143:7, 169-180, 210-215, 217).

With regard to credit transfer, Plaintiffs' evidence shows Defendant High Tech specifically represented credits would transfer to other colleges when they do not. The following is what was observed by former High Tech Director of Admissions Karen Matthew in early 2007:

- * Ms. Matthew learned while working as Director of Admissions at High-Tech Institute that High-Tech Institute Admissions Representatives often made a "convenient" misrepresentation in claiming that national accreditation such as that held by High-Tech Institute was a good thing and that it meant that all of your credits would transfer to any other college anywhere else in the country. Ms. Matthews notes that such a statement to prospective students by High-Tech Institute Admissions Representatives would be deceptive and likely untrue.

(SF ¶155(e)).

The above facts show there are genuine issues that must be decided by a jury. As such, Defendant's Motion for Summary Judgment must be overruled.

Defendant's Motion re-asserts many of the same arguments made to no avail in its Motion for Judgment on the Pleadings Regarding Future Events Misrepresentations, as well as in several prior actions, including: (a) on summary judgment in a prior case before the United States District Court for the Western District of Missouri, and, (b) on summary judgment in a case before the Honorable Senior Judge Michael Maloney in Clay County Circuit Court.

Appendix A previously filed with Plaintiffs' Response to Defendant's Motion for Judgment on the Pleadings contained some 2007 Orders of the United States District Court for the Western District of Missouri in Bradley, et al. v. CEC, et al., Case #05-0930-CV-W-SOW, denying many of these same arguments. Appendix B to that prior response also contained some 2009 Orders and some transcript excerpts from the Missouri Circuit Court for Clay County, Missouri, Senior Judge Michael Maloney, in Walters, et al. v. CEC, et al., Case No. 07CY-CV07481, who denied on summary judgment many of the same legal arguments the corporate Defendant has asserted in its Motion in this case.

In Bradley, et al. v. CEC, et al., Case #05-0930-CV-W-SOW – a case that involved several former graduates of a different proprietary school in the Kansas City area, Judge Wright denied defendants' motion for summary judgment which made many of the same or similar substantive arguments as those now asserted herein. Two of the Orders from the Bradley case were attached as Appendix A to Plaintiffs' prior response to Defendant's Motion for Judgment on the Pleadings. [See Orders dated 2/22/07 and 4/6/07].

At pages 12-13 of the 2/22/07 Order, the Bradley Court sets forth and rejects the same arguments that Defendant asserts herein: "SBC challenges whether plaintiff Roberts can show that SBC made a representation of a present and existing fact, and not a statement of opinion, expectation or prediction for the future. . . . If a jury believes the testimony and evidence of the plaintiffs in this case, the jury will be able to find that SBC's admissions representatives made representations of fact, not opinion, to prospective students that were false at the time the statements were made to the prospective students. Obviously the types of representations that were made to the prospective students were material to their decision as to whether or not to enroll in SBC." Id.

In Walters, et al. v. CEC, et al., Case No. 07CY-CV07481 (Clay County Circuit Court), these same arguments were rejected in their entirety by the Honorable Judge Michael Maloney upon a full

factual record. An Order and some transcript excerpts from the Walters case were previously attached as Appendix B to Plaintiffs' Response to Defendant's Motion for Judgment on the Pleadings. At the hearing, Judge Maloney made it clear he had reviewed the law and evidence and determined that the former students' claims were appropriate to proceed to trial. ("I don't think I'm required to sort through and make credibility judgments about what a jury is likely to do with it. I think I'm supposed to look to see if the plaintiffs can get to a jury on, I'm going to call it an intentional tort." Id. at p. 121).

Defendant High-Tech Institute is very familiar with valid claims such as those brought by these Plaintiffs resulting from Defendant's pattern and practice of deception at schools it owns and operates across the United States. There are many, many former and current claims, and none have had a court agree with the arguments Defendant sets forth in its Motion in this case.

With regard to Plaintiffs' claims for misrepresentations made by Defendant relating to starting salaries, job placement, job demand, and transferability of High-Tech/Anthem credits to other schools, Defendant claims that these misrepresentations -- made by its school admissions advisors in order to get Plaintiffs and many other students to enroll -- were not statements of present fact. To the contrary, the factual record reveals that specific factual misrepresentations were made to Plaintiffs in various of these areas, and those misrepresentations are actionable under Missouri law.

Further, under Missouri case law and the Restatement of Torts, even any statement that is an "opinion" is actionable under the circumstances in this case where the admissions advisor and the school itself sought to gain the trust of the prospective students, were in positions of superior knowledge regarding that matters represented, and concealed key facts. Also with regard to Plaintiffs' claims for misrepresentations made by Defendant relating to starting salaries, Defendant claims that those misrepresentations relate to the actions of third parties over whom Defendant has

no control. Defendant's contentions are lacking in merit, as case law makes it clear that these specific misrepresentations are actionable.

Defendant argues that their representations to Plaintiffs about "anticipated salaries" necessarily concerned future actions of independent third parties which Defendant claims are not actionable. The purported "future events" rule Defendant seeks to invoke is not so hard and fast as they would have the Court believe, and the same arguments have been rejected by Missouri Courts when asserted by other for-profit colleges like Defendant in their attempts to escape liability to the former students they have defrauded and deceived through their pattern and practice of deception.

"It is well settled that false representations as to future results *when made by one having or professing to have superior knowledge based on past experience of himself or others, are in effect, false representations of existing conditions and support allegations of fraud.*" Nichols v. Hendrix, 312 S.W.2d 163, 165-166 (Mo. App. 1958), quoting Wendell v. Ozark Orchard Co., 200 S.W. 747, 749 (Mo. App. 1917)(emphasis supplied).

Similarly, in Dawes v. Elliston, 369 S.W.2d 285 (Mo. App. 1963), the defendant insurance adjuster undertook to negotiate a settlement of plaintiff's personal injury claim arising from a car wreck caused by her son. Plaintiff claimed the adjuster procured the release of her claim by fraud. At trial, the jury agreed. On appeal, defendant contended that his representations as to future events could not sustain a claim of fraud. Id., at 287.

The Dawes Court rejected defendant's argument, noting as follows:

The statement made (as the jury found) that if plaintiff did not accept \$500.00, which the attorney was giving her because he felt sorry for her, she would get nothing and her son would lose his insurance and his license we think was a statement of fact. It was made by a claims adjuster for insurer of plaintiff's son, with experience in that field. It was made with the intention that plaintiff believe it and act on it, which she did. The declarant knew it was false and that he did not believe the events predicted would or could come true. But plaintiff was an elderly woman, of little worldly experience or means, of little education and of no business experience. She was dealing where a wrong step by her might well result in great harm to her son. These

elements of actionable fraud were present, and were the essentials to a submission of the issue.

Id. at 288.

Both *Dawes* and *Nichols* thus recognize that where defendant purports to have specialized knowledge and experience in the specific matter, its opinions of future events (including the actions of third persons) may be statements of fact as to such matters that will support a fraud claim. That rule is particularly applicable here because Plaintiffs have shown that Defendant's admissions representatives were trained in techniques that would enable them to secure the confidence and trust of Plaintiffs.

Plaintiffs' facts suggest that Plaintiffs' reasonably understood Defendant's representations about such matters as "statement[s] of fact intended to put plaintiff off his guard," rather than mere "off the cuff remark[s] meant as a general expression of opinion." *Constance*, 25 S.W.3d at 587-588, citing *Clark v. Olson*, 726 S.W.2d 718, 720 (Mo. banc 1987). See also, *Conroy Piano Co. v. Pesch*, 279 S.W. 226, 229 (Mo. App. 1925) ("the question of whether the representation is of opinion or fact is for the jury").

For all of the above legal reasons and factual disputes, Defendant's Motion For Summary Judgment on Plaintiff's Fraud claims should be denied.

B. Plaintiff's Negligent Training and Supervision Claims

Plaintiff does not believe her claims for negligent training and supervision of admissions personnel were previously dismissed. In any event, and although Plaintiffs' evidence in their Common Statement of Facts show many faults in the training and supervision of its admissions personnel, Plaintiffs believe the evidence is that Defendant was intentional in that training and was intentionally perpetuating a pattern and practice of fraud in its training and manipulation of its admissions personnel.

Plaintiffs' evidence regarding High Tech's inappropriate training and supervision of its Admissions Representatives includes the following: having trainees assume fake identities and mystery shop the competition, using scripts that make false statements, using enrollment agreements that say a catalog has been provided and yet training to never show or hand out a catalog until after the student is enrolled, not following up on any complaints, and much more. Each of these things, however, is being intentionally done by High Tech as a means of manipulating its own personnel. As such, Plaintiff DeSanto agrees to dismissal of the negligence claims in Count III of the Second Amended Complaint.

C. Plaintiff's Breach Of Contract Claims

Although Plaintiff believes the evidence is sufficient to support submitting her breach of contract claims to the jury in that Defendant made several promises in the enrollment documents that it did not keep, Plaintiff has determined to proceed to trial only on their fraud and negligence claims. As such, Plaintiff agrees to dismissal of the contract claims in Count IV of the Second Amended Complaint.

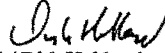
V. CONCLUSION

Defendant's Motion for Summary Judgment with regard to the fraud claims of Plaintiff DeSanto should be denied in its entirety. As set forth above, Plaintiffs DeSanto agrees to dismissal of her contract and negligence claims.

Respectfully submitted,

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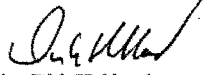
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was filed pursuant to the ECF system, this 12th day of August, 2013.


/s/ Dirk Hubbard
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.)	
Plaintiffs)	Case No.: 4:11-CV-00506-BP
)	
-vs-)	
)	
HIGH-TECH INSTITUTE, INC.)	
d/b/a ANTHEM EDUCATION GROUP)	
and HIGH TECH INSTITUTE)	
Defendant.)	

PLAINTIFFS MARCUS CHAMPION'S AND JODY HENDRIX'S
SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.)	
Plaintiffs)	Case No.: 4:11-CV-00506-BP
)	
)	
-vs-)	
)	
HIGH-TECH INSTITUTE, INC.)	
d/b/a ANTHEM EDUCATION GROUP)	
and HIGH TECH INSTITUTE)	
Defendant.)	

EXHIBITS TO
PLAINTIFFS' COMMON STATEMENT OF FACTS
REFERENCED IN
SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S TWO MOTIONS FOR SUMMARY JUDGMENT

- Exhibit 1 – Statement of Karen Matthews
- Exhibit 2 – Statement of Willis Zoellers
- Exhibit 3 – Statement of Lynn Magenheimer
- Exhibit 4 – Statement of Juli Kay Atkinson
- Exhibit 5 – Statement of Mark Pelmore
- Exhibit 6 – Statement of Dawn Bennett
- Exhibit 7 – Statement of Cheryl Ann Stewart
- Exhibit 8 – Statement of Jennifer Lewis
- Exhibit 9 – Excerpts From High Tech's Admissions Training Manual
- Exhibit 10 – ACCSCT 1/07 Probation Letter to High-Tech Institute
- Exhibit 11 – ACCSCT 10/07 Probation Letter to High-Tech Institute
- Exhibit 12 – Student Critique Form Complaints – Criminal Justice*
- Exhibit 13 – Student Critique Form Complaints – Surgical Technology*
- Exhibit 14 – Summary #1 of Student Critique Form Complaints*
- Exhibit 15 – Summary #2 of Student Critique Form Complaints*
- Exhibit 16 – Summary #3 of Student Critique Form Complaints*
- Exhibit 17 – Excerpt from UMKC Catalog Re: Transfer of Credits
- Exhibit 18 – Excerpt from William Jewell Catalog Re: Transfer of Credits
- Exhibit 19 – Excerpt from Avila Policy Re: Transfer of Credits
- Exhibit 20 – Excerpt from CMSU Catalog Re: Transfer of Credits
- Exhibit 21 – Excerpt from NWMS Catalog Re: Transfer of Credits* Exhibit to

be filed under seal as containing documents designated by Defendant as "confidential"

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.)	
Plaintiffs)	Case No.: 4:11-CV-00506-BP
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-vs-)	
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HIGH-TECH INSTITUTE, INC.)	
d/b/a ANTHEM EDUCATION GROUP)	
and HIGH TECH INSTITUTE)	
Defendant.)	

DEPOSITION TRANSCRIPTS REFERENCED IN
PLAINTIFFS' COMMON STATEMENT OF FACTS
REFERENCED IN
SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S TWO MOTIONS FOR SUMMARY JUDGMENT

Appendix 1 – Deposition of Marcus Champion
Appendix 2 – Deposition of Jody Hendrix
Appendix 3 – Deposition of Kelsey DeSanto
Appendix 4 – Deposition of Kathy Carrier (Gharst)
Appendix 5 – Deposition of Faith Perdue
Appendix 6 – Deposition of Sandra Jones
Appendix 7 – Deposition I of Marilyn Knight
Appendix 8 – Deposition II of Marilyn Knight
Appendix 9 – Deposition I of Charles Torres
Appendix 10 – Deposition II of Charles Torres
Appendix 11 – Deposition of Erin Reed
Appendix 12 – Deposition of Deborah Lang
Appendix 13 – Deposition of Terri Payne

COME NOW Plaintiffs Marcus Champion and Jody Hendrix, by and through counsel, and in opposition to Defendant High-Tech Institute, Inc.'s Motion for Summary Judgment, state as follows:

I. INTRODUCTION

Plaintiffs in this case include Marcus Champion and Jody Hendrix – two former students who attended the Kansas City location of High-Tech Institute/Anthem College in the short-lived and no-longer-offered Criminal Justice Program. High-Tech Institute/Anthem College is a for-profit, proprietary school owned by Anthem Education Group. Anthem Education Group currently owns and operates many for-profit school locations, including many locations known previously as High-Tech Institute which changed their school names to Anthem College. Over the period of time from 2003 to the present, this Kansas City location has offered a limited number of academic programs, most of which progress toward a “Diploma” or an “Associate of Applied Sciences” degree.

Plaintiffs claim that Defendant engaged in a pattern and practice of fraudulent misrepresentations, material omissions, and deceptive conduct in order to sell its school's programs and in order to induce prospective students to sign enrollment contracts with the school. The admissions advisors and other staff at each High-Tech Institute/Anthem College location are expected to utilize a myriad of corporately-designed sales and marketing techniques in order to get a prospective student to enroll. Student recruitment at High-Tech Institute/Anthem College is driven by high-pressure sales techniques and strategies. The national corporate parent company makes the policies, provides the training, and sets the enrollment quotas for the admissions personnel at its schools. These sales persons are trained by corporate to induce the prospective student to sign up for the program that makes the most money for the school. They are trained to create a “sense of urgency,” to “overcome objections,” to gain the trust of the prospective student, and where possible

to sign the prospective student up on the first in-person visit. These sales persons are provided explicit training from Defendant in how to close the sale and enroll students in the few and limited programs offered at the Kansas City location.

The pattern and practice of misconduct perpetrated by Defendant involves fraudulent misrepresentations and material omissions relating to topics such as (a) job placement services provided by the school upon graduation; (b) job demand and job prospects for High-Tech/Anthem program graduates; (c) starting salary for High-Tech/Anthem program graduates; (d) transferability of High-Tech/Anthem credits to other colleges and universities; (e) availability of externships; and, (f) accreditation of the school and various programs.

As to Plaintiffs Marcus Champion and Jody Hendrix, Defendant engaged in specific fraudulent misrepresentations which are set forth as to each Plaintiff in Count I and which were further amplified in each's deposition. Defendant also failed to disclose several key material facts, and these material and fraudulent omissions are also set forth in Count I. The fraud claims and the deposition testimony of Marcus Champion and Jody Hendrix are addressed in detail in the Argument section.

Count II alleges that this corporate Defendant engaged in deceptive conduct in violation of the Missouri Merchandising Practices Act (MPA). Judge Wright dismissed that Count on the pleadings based on his view that the product purchased from a for-profit school qualified for the "business pursuits" exception to the MPA because some of the alleged misrepresentations related to job placement, job prospects, and starting salaries. According to Judge Wright's Order, these unwary student enrollees at High Tech do not qualify for the consumer protection laws in Missouri because High Tech misled them with regard to some matters related to jobs. His Order noted that if the majors were something like Art History, then the business pursuits exception would not apply.

Plaintiffs' disagree with Judge Wright's Order and would request the Court to reexamine that ruling in light of the facts now fully set forth in this matter in Plaintiffs' Common Statement of Facts. Those facts show this to be exactly the type of situation that the MPA was designed to prevent. In any event, Plaintiffs' MPA claims have presently been dismissed, subject to the Court's possible Order reinstating them.

Count III alleges Defendant was negligent in the training and supervision of its admissions personnel, and Count IV alleges breach of contract. As explained more fully in the argument section below, Plaintiffs Champion and Hendrix believe their evidence is sufficient to have those claims submitted to the jury, but they are dismissing those claims in the interest of focusing this matter on the intentional and fraudulent conduct engaged in by Defendant.

Defendant High Tech Institute' has filed a Motion for Summary Judgment which addresses some, but not all, of the Count I fraud claims asserted by Plaintiffs Champion and Hendrix. Defendant's Motion also does not accurately characterize Plaintiffs' claims or the evidence. Indeed, when the Court consider Plaintiffs' controversions of Defendant's factual contentions as well as the extensive additional facts provided in Plaintiffs' separately-filed Statement of Common Facts, Defendant's Motion with regard to Plaintiffs' fraud claims should be denied based on the factual disputes alone. In addition, denial of Defendant's Motion for Summary Judgment on Plaintiffs' fraud claims is directly supported by several prior orders of Missouri State Courts and of United States District Courts in the Western District of Missouri.

II. PLAINTIFFS' RESPONSE TO DEFENDANT'S ALLEGED UNCONTROVERTED FACTS AND PLAINTIFFS' STATEMENT OF FACTS GENUINELY IN DISPUTE WHICH DEFEAT SUMMARY JUDGMENT

Defendant's Motion also does not come close to setting forth an accurate or complete statement of facts regarding the claims and evidence of Plaintiffs Champion and Hendrix. Thus,

Plaintiffs have separately filed an accurate and more complete statement of the true facts revealed in the discovery process in this case. Plaintiffs incorporate herein by reference their separate Common Statement of Facts Referenced in Suggestions in Opposition to Defendants' Two Motions for Summary Judgment. Those facts make it clear that all of the claims of Plaintiffs Champion and Hendrix should proceed to trial and that Defendant's Motion for Summary Judgment should be denied in its entirety.

In addition, Plaintiff responds to Defendant's specific alleged facts as follows:

1. Uncontroverted.
2. Uncontroverted.
3. Uncontroverted.
4. Uncontroverted with explanation that the documents were not read by

Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166).¹ Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student

¹SF References are to paragraphs of facts and citations contained in Plaintiffs' separately-filed Common Statement of Facts Referenced in Suggestions in Opposition to Defendants' Two Motions For Summary Judgment.

enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

5. Uncontroverted with explanation that the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

6. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things

that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

7. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶

175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

8. Uncontroverted with explanation that the documents were not read by Plaintiff Champion or his mother before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

9. Uncontroverted with explanation that the documents were not read by Plaintiffs Hendrix before signing because he trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. Some information also was not seen because it was on the back side of

documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

10. Uncontroverted.

11. Uncontroverted.

12. Uncontroverted.

13. Controverted in part. Defendant has taken only some of Mr. Champion's testimony and has not accurately set forth Mr. Champion's complete claims and testimony. Defendant's alleged fact 13g is a good example as Mr. Champion testified as to much more regarding blatant misrepresentations by Kathy Carrier that his credits would transfer to any college and specifically to UMKC. Defendant has done the same with Mr. Champion's testimony regarding salary misrepresentations, incorrectly ignoring and limiting much of Mr. Champion's actual testimony and claims. Mr. Champion's claims are more accurately and completely set forth in Plaintiffs' Common Statement of Facts, ¶¶ 1-22.

14. Uncontroverted.

15. Uncontroverted that the statement that "most of the graduates of the High

Tech criminal justice program were hired by the Kansas City, Missouri Police Department” was not made to Plaintiff Champion. High Tech made that specific misrepresentation to Plaintiff Hendrix.

16. Controverted. Mr. Champion was told that jobs were guaranteed. (SF ¶¶ 4, 10).

During their discussions at the College Career Fair and in the in-home meeting, High Tech Admissions Representative Kathy Carrier represented to Marcus Champion that High Tech provided assistance in locating employment and that High Tech’s graduates are guaranteed a job in the field. (Champion Depo., pp. 80:45-14, 81:1-10, 126:15-128:22).

17. Controverted. Mr. Champion was told that jobs were guaranteed. (SF ¶¶ 4, 10).

During their discussions at the College Career Fair and in the in-home meeting, High Tech Admissions Representative Kathy Carrier represented to Marcus Champion that High Tech provided assistance in locating employment and that High Tech’s graduates are guaranteed a job in the field. (Champion Depo., pp. 80:45-14, 81:1-10, 126:15-128:22).

18. Uncontroverted with explanation. It is uncontroverted that High Tech made these representations and did not follow through on them for Plaintiff Champion. In addition, the evidence is that there was no meaningful job placement assistance for any of the High Tech Criminal Justice Program graduates. (SF ¶¶ 46, 75, 96, 177-193).

19. Controverted. Mr. Champion requested placement assistance and it was not provided. (SF ¶ 46). Marcus Champion sought assistance but he did not receive any assistance in the graduate placement area from High Tech. (Champion Depo., pp. 105:1-10, 130:17-23).

20. Uncontroverted.

21. Uncontroverted.

22. Uncontroverted, but he expected based what High Tech said that the starting salary would be in the range of what High said and that at least expected such a range was a possibility. It was not.

23. Controverted. The testimony cited by Defendant does not support the contention. In addition, the Flip Chart shown to Marcus Champion showed entry level detective as a position that could be obtained immediately after graduation from High Tech. (Champion Depo., p. 52:13-19).

24. Controverted.

25. Controverted. Defendant High Tech lost its approval from its accreditors to issue Associates Degrees for all the reasons set forth in Plaintiffs' Common Statement of Facts. (SF ¶¶ 209-212).

26. Controverted. The testimony is that the meeting occurred in late 2007 or early 2008. High Tech was not truthful in those meetings. (SF ¶ 45).

27. Controverted. Marcus Champion testified that he was told by UMKC that his High Tech credits would not transfer and so he did not fill out an application. (SF ¶¶ 20-24).

28. Uncontroverted with explanation that High Tech therefore had full and complete knowledge that UMKC and the Community Colleges do not accept High Tech credits on transfer, and yet High Tech trains its Admissions Representatives to say that such credits do transfer. (SF ¶¶ 155(e), 169).

29. Uncontroverted.

30. Controverted in part. The cited testimony does not support Defendant's factual contention. Mr. Champion said he worked for a company that did clean up for private persons after a criminal event.

31. Uncontroverted in part. Mr. Champion did not and has not made anywhere near the income that High Tech told him it would obtain for him in the job it was supposed to locate for him.

32. Uncontroverted.

33. Uncontroverted.

34. Uncontroverted with explanation. The two or three follow-ups were so that Mr. Hendrix could come up with the \$50 application fee. (SF ¶ 87).

35. Uncontroverted that these were two of the potential careers Mr. Hendrix was considering.

36. Controverted in part. Defendant has taken only some of Mr. Hendrix's testimony and has not accurately set forth Mr. Hendrix's complete claims and testimony. Defendant's alleged fact 13d is a good example as Mr. Hendrix testified as to much more regarding blatant misrepresentations by Faith Perdue that his credits would transfer to any college and specifically to UMKC. Defendant ignores all of Mr. Hendrix's prior testimony regarding credit transfer and then attempts to cite for the Court only that which occurred on page 191-196. Defendant and its attorneys have appropriately done the same with Mr. Hendrix's testimony regarding salary misrepresentations, incorrectly ignoring and limiting much of Mr. Hendrix's actual testimony and claims. Mr. Hendrix's claims are more accurately and completely set forth in Plaintiffs' Common Statement of Facts, ¶¶ 67-85.

37. Uncontroverted that Mr. Hendrix said both the brochures and the Admissions Representative Faith Perdue made this representation.

38. Uncontroverted with explanation.

39. Controverted. Faith Perdue told Jody Hendrix he was guaranteed a job located by High Tech after graduation. (SF ¶¶ 67, 76). At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that High Tech Institute guaranteed that it would locate in-field position for him upon graduation. (Hendrix Depo., pp. 9:24-10:2, 96:7-96:20).

40. Uncontroverted.

41. Uncontroverted with explanation. Mr. Hendrix was told that he would be hired in a juvenile probation office position with his High Tech Associate's Degree.

42. Uncontroverted.

43. Uncontroverted.

44. Uncontroverted.

45. Uncontroverted.

46. Uncontroverted.

47. Uncontroverted with explanation. High Tech did nothing to assist Mr. Hendrix in locating this position, which paid under \$25,000 per year.

48. Uncontroverted.

49. Uncontroverted.

50. Uncontroverted.

51. Uncontroverted.

52. Uncontroverted with explanation that the only call Mr. Hendrix got after he submitted his State-wide Missouri application was for an interview for a rural position in outer areas of Missouri.

53. Uncontroverted.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate if, viewing the evidence most favorably to the non-moving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Thompson v. Hirano Tecseed Company, Ltd., 456 F.3d 805, 808 (8th Cir. 2006) (citing Fed.R.Civ. 56(c)). Summary judgment is not appropriate if the prima facie case is supported by facts sufficient to raise a genuine issue for trial. Thompson, 456 F.3d at 808 (citing A.T. Turner v. Gonzales, 421 F.3d 688, 694 (8th Cir. 2005)).

In determining a motion for summary judgment the court must accept as true **all** facts presented by the non-moving party and supported by the record. Id. (citing Beck v. Skon, 253 F.3d 330, 332-33 (8th Cir. 2001)). If a “rational trier of fact could find for the nonmoving party” then the trial court must find that genuine issues of fact exist and that summary judgment precluded. Unleashed Innovations, Inc. v. Deltic Timber Corp., 2003 WL 22661159 *1 (8th Cir. 2003).

Defendant’s Motion does not come close to meeting the standard for being granted summary judgment under Rule 56(c).

IV. ARGUMENT AND AUTHORITY

A. Plaintiffs’ Fraud Claims And Evidence Are Sufficient For The Jury’s Consideration (Responding to Pages 14-26 of Defendant’s Suggestions)

Defendant’s Motion for Summary Judgment mis-characterizes Plaintiffs’ fraud claims and mis-states the evidence supporting those claims. It then broadly argues that Plaintiffs cannot proceed with their misrepresentation claims because: (a) “for the most part, there is no evidence that anyone actually made the representations about its school and criminal justice program”; and, (b) “those representations were true, not material, were not believed or reasonably relied upon by Plaintiffs, or caused no injury to Plaintiffs.” (Defendant’s Suggestions, p. 14).

Defendant’s Motion should be denied, as Plaintiffs’ Statement of Facts makes it clear that there is evidence that the representations were made, that they were false, material, and that it was reasonable for Plaintiffs to rely upon what was said by the High Tech Admissions Representatives and High Tech..

For years, High Tech Institute/Anthem College has engaged in a pattern and practice of dishonest and fraudulent business practices designed to mislead prospective students concerning what an education at this proprietary school will mean upon graduation. In Missouri and in the Eighth Circuit the law has long held that common law fraud can be proven by demonstrating a pattern of similar conduct by the wrongdoer. Further and more specifically, in Missouri State and

Federal Courts, claims by proprietary school students who have been defrauded and deceived with regard to job placement, starting salaries, credit transfer have long been deemed actionable. Indeed, Judge Wright previously denied Defendant's Motion to Dismiss which claimed much the same as Defendant's present Motion when it asserted that Plaintiffs' fraud claims were not actionable because they involved promised of future action to be engaged in by third parties. Judge Wright denied Defendant's claim, as such fraudulent conduct by for-profit colleges such as High Tech has been deemed actionable time and time again by many courts. Such claims of future conduct to be engaged in by third parties are actionable when there is a relationship of trust, when there is superior bargaining power, and when there is greater information known on the part of one of the parties. Each of those applies to Plaintiffs' claims.

In their separately-filed Statement of Common Facts, Plaintiffs demonstrate to the Court that all of the misrepresentations made to them during and after the enrollment process were material and false, and that High Tech has made these same misrepresentations to other students before, during, and after their enrollment. The primary culprit in most of the fraudulent statements is the process utilized; however, high-pressure sales persons mislabeled as "admissions representatives" serve as the catalyst for an elaborate fraudulent scheme being perpetrated upon the public and the government. Time and time again, High Tech Admissions Representatives made identical misrepresentations to other prospective students concerning things like average starting salary, job placement, and transferability of credit hours. Plaintiffs' evidence further demonstrates a pattern and practice with regard to document signing by prospective students that is fraught with fraudulent and improper conduct on the part of High Tech. Telling is the fact that High Tech trains its Admissions Representative to never hand out or show a catalog to a prospective student enrollee until the enrollment paperwork is signed, and yet that very enrollment paperwork states that the student has already received and reviewed the catalog. (SF ¶ 115).

Plaintiffs present compelling affidavits, documents and deposition testimony about the elaborate and well rehearsed fraudulent schemes that have been developed and implemented by High Tech's ownership to generate millions of dollars in student loan revenues on the backs of unsuspecting and poorly prepared students. Indeed, High Tech's former Campus President and Director of Education has admitted that High Tech – Kansas City operated through a pattern and practice of misinformation coming from its Admissions Representatives since its inception in 2003 in Kansas City and that the High Tech Admissions Representatives in Kansas City were prone to lie to new potential new students. (SF ¶137 and ¶138). Plaintiffs' evidence also includes hundreds and hundreds of similar complaints from other students. (SF ¶¶ 139-147, 148(e), 148(f), 148(g), 148(h), 149). Plaintiffs' evidence also includes direct admissions from the Admissions Representatives who enrolled Plaintiffs, as well as those who trained them. (SF ¶¶ 48-65, 98-134). Plaintiffs' evidence includes direct admissions and facts showing the falseness of the representations repeatedly made to these Plaintiffs and others by High Tech/Anthem. (SF ¶¶ 176-193, 204-208). Plaintiffs' evidence include direct admissions and facts showing High Tech's emotional manipulation of prospective students and its fraudulent practices with regard to obtaining student signatures on enrollment documents. (SF ¶¶ 122-123, 162-168).

Indeed, the High Tech Admissions Representative who enrolled Plaintiff Jody Hendrix, Faith Perdue, admitted High Tech Institute specifically trained Admissions Representative Faith Perdue to she was trained by High Tech to attempt to get the consumer potential student enrollee to not make an intelligently-stimulated decision, but instead to make an emotional decision, come in for a face-to-face meeting, and enroll that same day in High Tech. (Perdue Depo., pp. 195:2-196:9). She also admitted she was taught by High Tech to sell the school through trying to draw an emotional response out of the prospective student, and that is what she did. (Perdue Depo., p. 271:8-15).

Defendant claims Plaintiffs have not shown the misrepresentations occurred, but Plaintiffs have evidenced their specific alleged misrepresentations as well as pattern and practice of such.

Defendant claims Plaintiffs should not have trusted or relied on what High Tech's Admissions Representatives said, but the testimony of High Tech officials is that students are expected to trust and rely on what is said by Admissions Representatives and that those Representatives have much more and greater information than the prospective student. (SF ¶¶ 63, 130-134, 152-154).

Defendant's reliance on its disclosures is factually and legally erroneous. First, none of those disclosures were knowing. Second, such disclosures are not legally valid to disclaim a fraud.

Finally, with regard to credit transfer, Plaintiffs' evidence shows Defendant High Tech specifically represented credits would transfer to other colleges such as UMKC when they do not. The evidence of what happened to Plaintiff Hendrix and Champion confirms what was observed by former High Tech Director of Admissions Karen Matthew who found as follows, in early 2007:

- * Ms. Matthew learned while working as Director of Admissions at High-Tech Institute that High-Tech Institute Admissions Representatives often made a "convenient" misrepresentation in claiming that national accreditation such as that held by High-Tech Institute was a good thing and that it meant that all of your credits would transfer to any other college anywhere else in the country. Ms. Matthews notes that such a statement to prospective students by High-Tech Institute Admissions Representatives would be deceptive and likely untrue.

(SF ¶155(e)).

The above facts show there are genuine issues that must be decided by a jury. As such, Defendant's Motion for Summary Judgment must be overruled.

In addition, Defendant's Motion does not address many of the specific claims of Plaintiffs, as those claims and testimony are more fully set forth in Plaintiffs' Common Statement of Facts, paragraphs 1-22 and 66-86. For example, Defendant's Motion does not address the video shown by

High Tech which also provided false representations. (SF ¶70). With regard to this video, the Criminal Justice instructor at that time, Cheryl Ann Stewart, has attested as follows:

- * At one point during her time as an instructor at High-Tech Institute, Ms. Stewart noticed the marketing video that was played by the school for prospective students to view while waiting in the lobby of the admissions office. She also viewed this same video material on a television commercial for High-Tech Institute. She noticed that several of the criminal justice field careers discussed and depicted in that video were not ones for which the prospective student would be qualified to even apply for with an Associates Degree from High-Tech Institute.
- * After seeing this video, Ms. Stewart discussed it with the head of the Criminal Justice Program, Jack Phan. Mr. Phan agreed that the video was inaccurate in that it displayed jobs that the prospective student would not be able to obtain with the High-Tech Institute Associate's Degree. They both agreed that the school should not be showing it to potential students.

(SF 176). In addition, Defendant's Motion does not address Jody Hendrix's claim regarding High Tech's financial aid misrepresentations that he would be able to use his GI Bill to cover all the cost of school. (SF ¶86). Defendant's Motion does not address the claim of both Plaintiffs Champion and Hendrix for High Tech's misrepresentations that there would be externships in the Criminal Justice Program, which High Tech admits is vital to obtaining good employment. (SF ¶¶ 202-203). There are several other specific claims of misrepresentation as set forth in Plaintiffs' facts, which are not addressed in Defendant's Motion. As such, summary judgment must be denied on those claims.

With regard to the claims it does address, Defendant's Motion re-asserts many of the same arguments made to no avail in its Motion for Judgment on the Pleadings Regarding Future Events Misrepresentations, as well as in several prior actions, including: (a) on summary judgment in a prior case before the United States District Court for the Western District of Missouri, and, (b) on summary judgment in a case before the Honorable Senior Judge Michael Maloney in Clay County Circuit Court.

Appendix A previously filed with Plaintiffs' Response to Defendant's Motion for Judgment on the Pleadings contained some 2007 Orders of the United States District Court for the Western District of Missouri in Bradley, et al. v. CEC, et al., Case #05-0930-CV-W-SOW, denying many of these same arguments. Appendix B to that prior response also contained some 2009 Orders and some transcript excerpts from the Missouri Circuit Court for Clay County, Missouri, Senior Judge Michael Maloney, in Walters, et al. v. CEC, et al., Case No. 07CY-CV07481, who denied on summary judgment many of the same legal arguments the corporate Defendant has asserted in its Motion in this case.

In Bradley, et al. v. CEC, et al., Case #05-0930-CV-W-SOW – a case that involved several former graduates of a different proprietary school in the Kansas City area, Judge Wright denied defendants' motion for summary judgment which made many of the same or similar substantive arguments as those now asserted herein. Two of the Orders from the Bradley case were attached as Appendix A to Plaintiffs' prior response to Defendant's Motion for Judgment on the Pleadings. [See Orders dated 2/22/07 and 4/6/07].

At pages 12-13 of the 2/22/07 Order, the Bradley Court sets forth and rejects the same arguments that Defendant asserts herein: "SBC challenges whether plaintiff Roberts can show that SBC made a representation of a present and existing fact, and not a statement of opinion, expectation or prediction for the future. . . . If a jury believes the testimony and evidence of the plaintiffs in this case, the jury will be able to find that SBC's admissions representatives made representations of fact, not opinion, to prospective students that were false at the time the statements were made to the prospective students. Obviously the types of representations that were made to the prospective students were material to their decision as to whether or not to enroll in SBC." Id.

In Walters, et al. v. CEC, et al., Case No. 07CY-CV07481 (Clay County Circuit Court), these same arguments were rejected in their entirety by the Honorable Judge Michael Maloney upon a full

factual record. An Order and some transcript excerpts from the Walters case were previously attached as Appendix B to Plaintiffs' Response to Defendant's Motion for Judgment on the Pleadings. At the hearing, Judge Maloney made it clear he had reviewed the law and evidence and determined that the former students' claims were appropriate to proceed to trial. ("I don't think I'm required to sort through and make credibility judgments about what a jury is likely to do with it. I think I'm supposed to look to see if the plaintiffs can get to a jury on, I'm going to call it an intentional tort." Id. at p. 121).

Defendant High-Tech Institute is very familiar with valid claims such as those brought by these Plaintiffs resulting from Defendant's pattern and practice of deception at schools it owns and operates across the United States. There are many, many former and current claims, and none have had a court agree with the arguments Defendant sets forth in its Motion in this case.

With regard to Plaintiffs' claims for misrepresentations made by Defendant relating to starting salaries, job placement, job demand, and transferability of High-Tech/Anthem credits to other schools, Defendant claims that these misrepresentations -- made by its school admissions advisors in order to get Plaintiffs and many other students to enroll -- were not statements of present fact. To the contrary, the factual record reveals that specific factual misrepresentations were made to Plaintiffs in various of these areas, and those misrepresentations are actionable under Missouri law.

Further, under Missouri case law and the Restatement of Torts, even any statement that is an "opinion" is actionable under the circumstances in this case where the admissions advisor and the school itself sought to gain the trust of the prospective students, were in positions of superior knowledge regarding that matters represented, and concealed key facts. Also with regard to Plaintiffs' claims for misrepresentations made by Defendant relating to starting salaries, Defendant claims that those misrepresentations relate to the actions of third parties over whom Defendant has

no control. Defendant's contentions are lacking in merit, as case law makes it clear that these specific misrepresentations are actionable.

Defendant argues that their representations to Plaintiffs about "anticipated salaries" necessarily concerned future actions of independent third parties which Defendant claims are not actionable. The purported "future events" rule Defendant seeks to invoke is not so hard and fast as they would have the Court believe, and the same arguments have been rejected by Missouri Courts when asserted by other for-profit colleges like Defendant in their attempts to escape liability to the former students they have defrauded and deceived through their pattern and practice of deception.

"It is well settled that false representations as to future results *when made by one having or professing to have superior knowledge based on past experience of himself or others, are in effect, false representations of existing conditions and support allegations of fraud.*" Nichols v. Hendrix, 312 S.W.2d 163, 165-166 (Mo. App. 1958), *quoting Wendell v. Ozark Orchard Co.*, 200 S.W. 747, 749 (Mo. App. 1917)(emphasis supplied).

Similarly, in Dawes v. Elliston, 369 S.W.2d 285 (Mo. App. 1963), the defendant insurance adjuster undertook to negotiate a settlement of plaintiff's personal injury claim arising from a car wreck caused by her son. Plaintiff claimed the adjuster procured the release of her claim by fraud. At trial, the jury agreed. On appeal, defendant contended that his representations as to future events could not sustain a claim of fraud. Id., at 287.

The Dawes Court rejected defendant's argument, noting as follows:

The statement made (as the jury found) that if plaintiff did not accept \$500.00, which the attorney was giving her because he felt sorry for her, she would get nothing and her son would lose his insurance and his license we think was a statement of fact. It was made by a claims adjuster for insurer of plaintiff's son, with experience in that field. It was made with the intention that plaintiff believe it and act on it, which she did. The declarant knew it was false and that he did not believe the events predicted would or could come true. But plaintiff was an elderly woman, of little worldly experience or means, of little education and of no business experience. She was dealing where a wrong step by her might well result in great harm to her son. These

elements of actionable fraud were present, and were the essentials to a submission of the issue.

Id. at 288.

Both *Dawes* and *Nichols* thus recognize that where defendant purports to have specialized knowledge and experience in the specific matter, its opinions of future events (including the actions of third persons) may be statements of fact as to such matters that will support a fraud claim. That rule is particularly applicable here because Plaintiffs allege that Defendant's admissions representatives were trained in techniques that would enable them to secure the confidence and trust of Plaintiffs. (*See* Paragraphs 22 and 23 of Plaintiffs' Second Amended Complaint).

Plaintiffs' facts suggests that Plaintiffs' reasonably understood Defendant's representations about such matters as "statement[s] of fact intended to put plaintiff off his guard," rather than mere "off the cuff remark[s] meant as a general expression of opinion." *Constance*, 25 S.W.3d at 587-588, citing *Clark v. Olson*, 726 S.W.2d 718, 720 (Mo. banc 1987). *See also, Conroy Piano Co. v. Pesch*, 279 S.W. 226, 229 (Mo. App. 1925) ("the question of whether the representation is of opinion or fact is for the jury").

For all of the above legal reasons and factual disputes, Defendant's Motion For Summary Judgment on Plaintiffs' Fraud claims should be denied.

B. Plaintiffs' Negligent Training and Supervision Claims

Plaintiffs do not believe their claims for negligent training and supervision of admissions personnel were previously dismissed. In any event, and although Plaintiffs' evidence in their Common Statement of Facts show many faults in the training and supervision of its admissions personnel, Plaintiffs believe the evidence is that Defendant was intentional in that training and was intentionally perpetuating a pattern and practice of fraud in its training and manipulation of its admissions personnel.

Plaintiffs' evidence regarding High Tech's inappropriate training and supervision of its Admissions Representatives includes the following: having trainees assume fake identities and mystery shop the competition, using scripts that make false statements, using enrollment agreements that say a catalog has been provided and yet training to never show or hand out a catalog until after the student is enrolled, not following up on any complaints, and much more. Each of these things, however, is being intentionally done by High Tech as a means of manipulating its own personnel. As such, Plaintiffs agree to dismissal of the contract claims in Count IV of the Second Amended Complaint.

C. Plaintiffs' Breach Of Contract Claims

Although Plaintiffs believe the evidence is sufficient to support submitting their breach of contract claims to the jury in that Defendant made several promises in the enrollment documents that it did not keep, Plaintiffs have determined to proceed to trial only on their fraud and negligence claims. As such, Plaintiffs agree to dismissal of the contract claims in Count IV of the Second Amended Complaint.

V. CONCLUSION

Defendant's Motion for Summary Judgment with regard to the fraud claims of Plaintiffs Champion and Hendrix should be denied in its entirety. As set forth above, Plaintiffs Champion and Hendrix agree to dismissal of their contract and negligence claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was filed pursuant to the ECF system, this 12th day of August, 2013.

/s/ Dirk Hubbard
Attorney for Plaintiff

**Senator Chuck Grassley
Questions for the Record
Armando O. Bonilla**

Nominee, Judge for the U.S. Court of Federal Claims

- 1. Your Senate Questionnaire indicates that you have served the Department of Justice in a variety of capacities for twenty years. If confirmed, what lessons or principles have you learned from your experiences that you will take with you to the Court of Claims?**

Response: A reputation of integrity is a lawyer's greatest asset. Throughout my career, I have endeavored to behave with absolute integrity, humility, and the highest standards of work ethic and professionalism; take great pride in my work; and treat others with respect. I have worked hard to establish a record and reputation of always basing my decisions and actions solely upon a careful examination of the relevant facts and strict adherence to the rule of law. If confirmed, I commit to staying true to these values.

- 2. As an attorney for the Department of Justice it is your responsibility to zealously represent the United States. If confirmed, how do you plan to transition to neutrally presiding over cases?**

Response: As a government advocate, my mission is to act in the best interest of the United States. A judge, in contrast, is duty bound to be and remain impartial. If confirmed, I would draw upon my experience as a federal district court law clerk in making the transition from advocate to judge. Between 1992 and 1994, I drafted dozens of bench memoranda and opinions and was exposed to an extraordinary example of an impartial federal trial court judge. Also, for two decades, I had the privilege of appearing before a number of federal trial and appellate court judges across this Nation whom I, my opposing counsel and their clients, and the public relied upon to be and remain neutral. I will never lose sight of the importance of a judge's impartiality in our judicial system.

- 3. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: Personal views are not relevant to, and have no place in, a judge's fulfillment of his or her solemn responsibilities in the administration of justice. My personal beliefs never played a role in any bench memorandum or opinion I drafted during my two-year federal district court clerkship; nor have my personal views ever been a factor in any civil case I litigated or settled, criminal case I prosecuted or declined, appellate argument I advanced, or policy decision I made or recommended during my twenty-year tenure with the Department of Justice. If confirmed, I assure the Committee, future litigants and their counsel, and the public that I would impartially and steadfastly adhere to the rule of law without regard to any personal views and be fair to all who appear before the court.

4. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: If confirmed, I assure the Committee that every decision I make would reflect an impartial and steadfast adherence to precedent and the text of the law rather than any underlying political ideology or motivation. Like personal views, political ideology and motivation have no place in a judge's fulfillment of his or her solemn responsibilities in the administration of justice.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attributes of a judge are integrity, impartiality, and an unwavering commitment to the rule of law. A judge's failure to possess and consistently act in accordance with these values undermines our Nation's system of justice and the public's confidence therein, by removing the core principles of fairness, predictability, and stability in the law. I possess and have acted in accordance with these attributes throughout my career.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be impartial, even-tempered, open-minded, fair, humble, and respectful towards all parties, counsel, and witnesses who appear before the court and all court personnel. During my two-year clerkship with United States District Judge for the District of New Jersey Garrett E. Brown, Jr. (now retired), I benefitted greatly from his example. In each case, the parties walked away from the court proceeding knowing that Judge Brown was ably prepared, had a firm grasp of all material facts and the governing law, allowed each party to present their position, understood the arguments advanced, maintained control of the courtroom through his steadfast adherence to the rule of law and court procedures, and ruled without delay and without regard to his personal beliefs.

Throughout my career, I have modeled my behavior after the extraordinary example of Judge Brown and the many other exemplary trial and appellate court judges throughout this Nation that I have had the privilege of appearing before. If confirmed, I would commit to hold myself to the highest standards of integrity, work ethic, and professionalism and without exception I will impartially adhere to the rule of law.

7. **If confirmed, how do you intend to manage your caseload?**

Response: Between 1994 and 2001, while serving as a trial and appellate attorney in the Civil Division of the Department of Justice, I litigated over 100 cases before the Court of Federal Claims and briefed and argued over 50 appeals before the Federal Circuit. As a result of these experiences, if confirmed, my familiarity with the range of cases and issues properly brought before the Court of Federal Claims – and the court's

jurisdictional limitations – would enable me to more quickly and efficiently manage my caseload.

Moreover, in following the example of proper case management demonstrated by Judge Brown during my clerkship, if confirmed, I would: conduct weekly docket reviews with my law clerks and judicial assistant; review court filings as they are docketed to ensure that routine matters are addressed promptly and substantive motions are resolved in a timely manner; issue and adhere to strict pretrial scheduling orders after consulting with the parties; schedule oral arguments, conduct trials, and issue court decisions without delay; conduct regular status conferences with counsel to ensure that pending cases are advancing; encourage parties to engage in a continuous and meaningful dialogue in an effort to narrow the issues requiring resolution by the court; encourage parties to reasonably consider settlement; offer to serve as a settlement judge in any case pending on my docket or the docket of any of my colleagues; and offer to refer any case pending on my docket to another judge on the court for settlement negotiations.

8. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. In my experience over the last two decades litigating cases before the Court of Federal Claims and a number of federal district courts around the country, trial judges play a vital role in controlling the pace and conduct of litigation. If confirmed, I would be fully engaged – as outlined in response to Question No. 7 – in the timely resolution of all cases brought before the court.

9. **In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.**

Response: If confirmed, I commit to faithfully following the binding precedents of the Supreme Court and the Federal Circuit. I would do so without regard to whether I personally agree or disagree with such precedents. As stated in response to Question No. 3, a judge's personal views are not relevant to, and serve no legitimate purpose in, ruling upon a case or controversy presented before the court. I adhered to these principles during my two-year federal district court clerkship and have continued to do so throughout my twenty-year career with the Department of Justice.

10. **In your view, are there particular challenges facing the Court of Claims? Do you see any areas where improvement is needed?**

Response: In Fiscal Year 2014, the Court of Federal Claims has seen a significant increase in the number of procurement challenges, which by their nature requires expedited proceedings. Concomitantly, the court's bench has experienced a high

vacancy rate. If confirmed, I would work hard to ensure that these cases – as well as all matters assigned to my docket – are resolved timely and in strict accordance with the governing law.

With regard to areas where improvement is needed, I am not currently in a position to identify court-specific concerns or needs. If confirmed, I would work with the Chief Judge, my colleagues, and court staff to continuously identify areas where improvement is needed and develop and implement performance-based and cost-effective solutions.

**Responses of Wendy Beetlestone,
Nominee, United States District Court for the Eastern District of Pennsylvania
To the Written Questions for the Record by Senator Chuck Grassley**

1. **An important part of any district judge's work is presiding over criminal cases, and it does not appear that you have handled any criminal cases in your legal career. If confirmed, what steps will you take to familiarize yourself with criminal law before taking the bench?**

Response: Given that my background is primarily in complex federal civil litigation, I am well aware how important it is to familiarize myself with criminal law and procedure before taking the bench. I have begun to do so by, for example, reading materials supplied to me by the Federal Judicial Center, the U.S. Sentencing Guidelines, and other materials recommended to me by practicing attorneys. I plan to continue this reading in the upcoming months as well as to observe criminal proceedings. If I am confirmed, I would seek the advice and guidance of the sitting judges of the Eastern District of Pennsylvania bench particularly those who, like me, transitioned from a civil litigation practice.

2. **What is the most important attribute of a judge, and do you possess it?**

Response: Impartiality, both in the sense of treating all parties fairly and even-handedly as well as a commitment to making decisions based on objective criteria relevant to the matter before the court, is the most important attribute of a judge. I believe I do possess this attribute and, should I be confirmed as a district judge, would use it as the touchstone for every decision I make.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: The most appropriate temperament for a judge involves the respectful treatment of litigants, attorneys, colleagues and court personnel; respect for process as shown by a commitment to ensuring the just, speedy, and inexpensive determination of every action and proceeding; respect for the law as illustrated by the impartial and faithful adherence to applicable law and precedent; and respect for the position of an Article III judge through judicial restraint, honesty and integrity. I believe I possess these attributes and, should I have the privilege of being confirmed, would act in accordance with them.

4. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: If I have the privilege of serving as a district judge, I would faithfully follow Supreme Court and Third Circuit precedent in any case or controversy that comes before me regardless of any personal views I may have about any particular decisions.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In a matter of first impression, as in any case, I would first read and evaluate the plain language of the statutory provision at issue. *See, e.g., United States v. Trucking Assn's*, 310 U.S. 534, 543 (1940) ("There is . . . no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning."). If the language was not clear, I would employ the relevant rules of statutory construction to determine its meaning. I would also review decisions of the Supreme Court and the Third Circuit as well as other persuasive authority interpreting analogous provisions. If the meaning of the words remained ambiguous, I would consider consulting legislative history.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed as a district judge I would apply binding precedent of the Supreme Court and the Third Circuit regardless of any personal views I may have concerning the merits of the decision.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: If I am confirmed as a district judge and presented with the question of whether a particular statute or statutory provision was unconstitutional, I would make my decision in accordance with Supreme Court and Third Circuit precedent using the following general principles: A statute enacted by Congress is presumed to be constitutional. Thus, if the statute can be reasonably interpreted to avoid finding it unconstitutional, this interpretation should be used. Only if a statute clearly exceeds congressional authority or violates a provision of the Constitution should it be declared unconstitutional.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No, unless Supreme Court or Third Circuit precedent require it. Absent such precedent it is not proper for a judge to rely on foreign law, or any views of the “world community” in determining the meaning of the Constitution.

9. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: During my career as a lawyer, I have advised and represented clients without regard to political motivation or ideology and, if confirmed as a district judge, would be unequivocally committed to making all my decisions along the same lines.

10. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: During my career as a lawyer, I have advised and represented clients without regard to any personal views I may have held. If confirmed as a district judge, I give my assurance that I would make all my decisions along the same lines and would be fully committed to fairness to all who appear before me.

11. **If confirmed, how do you intend to manage your caseload?**

Response: If confirmed as district judge I would manage my caseload with the goal of ensuring the just, speedy, and inexpensive determination of every matter and proceeding. I would take an active and ongoing role in case management using all the tools available to me including early evaluation of each matter, status conferences, as well as scheduling and discovery orders.

12. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I believe that judges should be actively involved in case management and, in doing so, should seek the input of the litigants. However, I also believe judges have a responsibility to hold litigants to deadlines.

13. **President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: I am not aware of the context in which this statement was made. However, if I am confirmed as a district judge, my goal in every matter or proceeding before me would be for the litigants, regardless of the result, to walk away from the courtroom with the confidence that I listened carefully and gave fair consideration to their

arguments. To the extent that empathy (in the sense of being able to listen to and understand other people's positions) helps me manage the courtroom and achieve that goal, it has a role. However, I would never allow empathy (if defined as including an element of sympathy) to engender favor for one party over another. It is never the role of a judge to favor one party over another.

14. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

- a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹**

- i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Response: Yes.

- ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

Response: I understand the phrase "lawful marriages" to refer back to earlier portions of the paragraph which discuss "those persons who are joined in same-sex marriages made lawful by the state" and "those whom the State, by its marriage laws, sought to protect in personhood and dignity."

- iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes.

- iv. **Are you committed to upholding this precedent?**

Response: Yes. If confirmed as a judge I would be committed to following all Supreme Court precedent.

- b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By**

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes. The Court’s opinion is premised on its recognition of “the extent of the state power and authority over marriage as a matter of history and tradition” and the “virtually exclusive primacy . . . of the States in the regulation of domestic relations.”

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. I am committed to giving the Court’s opinion in *Windsor* full force and effect just as I am committed to giving full force and effect to all Supreme Court decisions.

- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. I am committed to giving the Court’s opinion in *Windsor* full force and effect just as I am committed to giving full force and effect to all Supreme Court decisions.

- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴

² *Id.* 2689-2690.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes, if confirmed I would be committed to giving the Court's opinion full force and effect.

- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'" ⁵

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes, if confirmed I would be committed to giving the Court's opinion full force and effect.

- 15. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

⁵ *Id.* (internal citations omitted).

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

16. Please describe with particularity the process by which these questions were answered.

Response: Upon receiving the questions, I prepared the responses. I then discussed my responses with the Department of Justice, Office of Legal Policy. I then finalized my responses and authorized their transmittal to the Senate Judiciary Committee.

17. Do these answers reflect your true and personal views?

Response: Yes.

**Responses of Wendy Beetlestone,
Nominee, United States District Court for the Eastern District of Pennsylvania
To the Written Questions for the Record by Senator Ted Cruz**

- 1. Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: If I am confirmed as a district judge, my judicial philosophy would be built on a foundation of impartiality. Each decision would be based on relevant Supreme Court and Third Circuit precedent as applied to the facts of the matter at hand. I am not sufficiently familiar with the body of work of each of the Supreme Court Justices referenced above to determine whose judicial philosophy is most analogous to what I have described.

- 2. Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: I am aware of the Supreme Court's use of originalism in *District of Columbia v. Heller*, 554 U.S. 570, 595, 605 (2008). If I am confirmed as a district judge, in interpreting a provision of the Constitution, I would follow *Heller* and all other applicable Supreme Court precedent.

- 3. If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If I were confirmed as a district judge, I would apply Supreme Court and Third Circuit precedent and have no authority to overrule such precedent.

- 4. Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: If I have the honor of being confirmed as a district judge, I would faithfully follow Supreme Court and Third Circuit precedent, including *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), in any case or controversy that comes before me regardless of any personal views I may have about those decisions.

- 5. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: If confirmed, I would follow Supreme Court and Third Circuit precedent in deciding all matters before me. Accordingly, if presented with the question of Congress' power to regulate non-economic activity pursuant to the Commerce Clause in conjunction with the Necessary and Proper Clause I would look to Supreme Court case law that has evaluated whether Congress has the power to regulate non-economic activity

under the Commerce Clause. *See, e.g., Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995).

6. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court held that the President's power to issue orders or take executive action must stem either from an act of Congress or from the Constitution itself. *Id.* at 585. If I have the honor of becoming a district judge and am presented with an issue of the judicially enforceable limits on the President's ability to issue a particular executive order or take a particular executive action, I would follow controlling Supreme Court and Third Circuit precedent recognizing that any decision must rest "on the narrowest possible ground capable of deciding the case." *Dames & Moore v. Regan*, 453 U.S. 654, 660-61 (1981).

7. When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: Supreme Court precedents have held that a right is fundamental for the purposes of the substantive due process doctrine when it is deeply rooted in the nation's history and tradition and is implicit in the concept of ordered liberty. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702 (1997). If I have the honor of being confirmed as a district judge, I would follow this and all other Supreme Court precedents.

8. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: If confirmed as a district judge, any decision I make in a matter before me concerning whether a classification should be subjected to heightened scrutiny would be premised on controlling Supreme Court and Third Circuit precedent as to whether it is a suspect classification or a classification that burdens a fundamental right. *See, e.g., City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985).

9. Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed as a district court judge, I would decide any cases that may come before me concerning racial preferences in public higher education by reference to Supreme Court and Third Circuit precedent which includes, *inter alia*, *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), regardless of any personal views I may have.

**Senator Grassley
Questions for the Record**

**Mark A. Kearney,
Nominee, United States District Judge for the Eastern District of Pennsylvania**

- 1. You have served as a Complex Discovery Master and as a member of the Hearing Committee for the Pennsylvania Supreme Court Disciplinary Board. If confirmed, what have you learned from these experiences that will help you as a federal judge?**

Response: My experiences have taught me how to remain absolutely impartial, to treat the litigants with courtesy and fairness, including to always be prepared and work hard to arrive at the result required consistent with precedent, as soon as practicable. In multiple adjudicative experiences, I listened to extensive evidence, made evidentiary rulings and entered orders. Further, my experiences required cogent and persuasive writing to ensure that the parties, as well as the Courts reviewing my orders and advisory opinions, could appreciate the soundness of my reasoning consistent with precedent.

- 2. The majority of your practice has been in civil litigation.**

- a. Please describe your experience with criminal litigation.**

Response: My criminal litigation experience arises primarily from the overlay between the criminal statutes under Title 18 of the United States Code and various business torts and civil claims, such as the RICO statute, the Computer Fraud and Abuse Act and the federal securities laws. Specifically, I have represented persons alleged to have committed bank, tax and wire fraud in investigations, in negotiations with the United States Attorney and agents of the Internal Revenue Service and Postal Inspector, and in the presentation of materials to prosecutors to address potential charges and sentencing. Also, as co-lead counsel for federally insured institutions, I regularly prepared suspicious activity reports, draft Informations and draft Indictments detailing the liability of subject persons under Title 18 of the U.S. Code alleged to have committed bank fraud. I also represented executives facing criminal charges arising under the federal securities laws, including in negotiations and resolutions with the enforcement division of the Securities and Exchange Commission. While I have tried thirty civil matters to verdict, I have been able to resolve criminal matters for my clients without trial. As a seasoned commercial trial lawyer in the District Courts, I have the benefit of extensive familiarity with the Federal Rules of Evidence applicable in criminal proceedings.

- b. If confirmed, what steps will you take to familiarize yourself with criminal law before taking the bench?**

Response: If confirmed as District Court Judge, I would continue to study the holdings of the United States Supreme Court and the United States Court of Appeals for the Third Circuit with a particular focus on criminal procedure and interpretation of

criminal statutes. I commit to a careful and diligent study of each of the substantive areas of the law which I may face before approaching any case. I anticipate learning new issues in the federal criminal law and procedure, and I would carefully study and apply the established precedent after listening carefully to the facts. I also hope to discuss novel issues of the criminal law, and nuances of criminal procedure with my potential colleagues on the bench both in the Eastern District and throughout the United States, including at numerous seminars made available to me by the Federal Judicial Center.

3. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge, as I have learned from appearing before well over a hundred of them in my career, is to be fair and diligent as each matter involves a vitally important aspect of someone's life placed before the judge to assist in a resolution. This privilege of public service requires a commitment to be fair and prepared. This standard requires hard work, a characteristic which I have exhibited since working night crew at supermarkets to pay for college and law school, and in attaining the success and peer accreditation I have had to date in private practice while serving as a leader of the organized Bar and non-profit organizations in Pennsylvania. A judge must also understand his or her limited role in our constitutional democracy. As shown throughout my career, I am fair and patient in listening to every side and work hard to appreciate the issues placed before me.

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: If confirmed as a District Court Judge, my temperament would be one of courtesy, considerable patience and careful listening to every aspect of a matter placed before me, with the utmost respect for counsel and the litigants. I meet that standard, as evidenced in my experience as a former Complex Discovery Master and a Hearing Committee member of the Pennsylvania Supreme Court's Disciplinary Board.

5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I would faithfully follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Third Circuit regardless of my personal view of any such precedent. My experience has long taught me that the citizens will be most comfortable with the judicial system when they can rely on a judge who, after study and deliberation, consistently applies the precedent existing in that court.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If confirmed as a District Court Judge, I expect to occasionally face cases of first impression and would faithfully look to the plain meaning of the statute or Constitutional provision at issue. If the statute or Constitutional provision is unambiguous, I would faithfully apply its plain meaning to the facts. Otherwise, I would look to analogous cases from the United States Supreme Court or from the United States Court of Appeals for the Third Circuit for guidance. If there were no analogous cases in the United States Supreme Court or the Third Circuit, I would look to appellate courts in other Circuits for their guidance in analogous cases as persuasive authority.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: Regardless of my personal views, I would be duty bound to apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Third Circuit, and I would do so. Personal views would not affect my judicial decision process.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: All federal statutes are presumed to be constitutional. Under the doctrine of constitutional avoidance, I would look to interpret a statute so that it would result in being constitutional. The only instance in which it would be appropriate for a District Court Judge to declare a statute enacted by Congress unconstitutional is if, consistent with guidance from the Supreme Court and the United States Court of Appeals for the Third Circuit, the statute clearly violates a provision of the Constitution or Congress exceeded its authority.

9. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No. It is never proper for judges to rely on foreign law or views of the world community in determining the meaning of the Constitution. The Constitution is a domestic document and judges are to look to domestic law.

10. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: Public trust in our federal judiciary, as well as the efficient administration of the courts, requires that District Court Judges strictly apply the precedent of the United States Supreme Court and United States Courts of Appeals. I assure the Committee that if confirmed, I would issue decisions firmly grounded in precedent and not political ideologies or motivations.

- 11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: A District Court Judge must put aside personal views and be scrupulously fair to all who appear before the Court. As a commercial trial lawyer, I have set aside my personal views to advocate for clients in a wide variety of federal court matters. I assure the Committee and future litigants that I would continue to set aside my personal views and be scrupulously fair to all who appear before me, if I were confirmed.

- 12. If confirmed, how do you intend to manage your caseload?**

Response: As an advocate in federal courts, I have always sought definite deadlines and direction from the Court on resolving the parties' dispute. If confirmed, I would manage the caseload through the use of early pretrial conferences and the involvement of United States Magistrate Judges to ensure a balanced approach to discovery proportional to the needs of the case, as well as to focus on settlement. I expect to have a civil deputy clerk assist me in setting a reasonable and efficient calendar that counsel and the parties will be required to follow and to have a criminal deputy clerk move criminal matters to resolution in a reasonable and efficient manner consistent with the rights of the government and the accused.

- 13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, judges have a central role. If confirmed, I would manage the caseload by the prompt holding of Rule 16 and 26 and other pre-trial conferences necessary to set and maintain reasonable and efficient schedules. As a long-time federal trial lawyer, I am well aware that deadlines, and in particular a trial date, have a beneficial impact upon the resolution of matters and the attention placed on those matters by counsel. I am also mindful of the effect of electronic discovery protocols and the need to efficiently manage protocols in proportion to the needs of the case. These matters must be addressed early in the case. I would also appropriately use the services of the Magistrate Judges to the extent consistent with the needs of the disputes. Further, my experience specifically teaches that an initial round of depositions of the key witnesses for a limited period of time may help narrow the issues before a second pre-trial conference. If confirmed, I also expect to rely upon the advice of the talented jurists presently serving the Court.

- 14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in**

cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: As an advocate, my role is to zealously protect and advance the interest of my clients consistent with my professional obligations and the rules of civil and criminal procedure. As a judge, I would shed the advocacy role to be impartial at all times. I would expect to carefully examine the submissions of all parties, study the case law and all the competent evidence presented. I would prepare several drafts of opinions that would, consistent with my practice, be revised and amended as I continue to study the case law and revisit the evidentiary record. I expect the most difficult part of this transition would be learning the criminal law and procedure regarding non-white collar crimes.

- 15. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: If confirmed as a District Court judge, my responsibility would be to apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Third Circuit to every case, regardless of its difficulty. My responsibility would be to fairly and impartially apply the law to the studied facts in evidence and not invoke my perspectives, concerns or values onto the precedent.

- 16. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

- a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹**

- i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Response: Yes, Justice Kennedy’s statement qualifies the *Windsor* holding.

- ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?**

Response: I understand that Justice Kennedy is referring to the marriages of

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

“those persons who are joined in same-sex marriages made lawful by the state” (133 S. Ct. at 2695) and “those whom the state, by its marriage laws, sought to protect in personhood and dignity”. *Id.* at 2697.

iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

Response: Yes, the Supreme Court’s opinion is limited to those circumstances in which states have legalized or permitted same-sex marriage.

iv. Are you committed to upholding this precedent?

Response: Yes, if confirmed as a District Court judge, I commit to give full force and effect to *Windsor* as well as any applicable holding of the Supreme Court or Third Circuit Court of Appeals.

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes. All portions of the Supreme Court’s decision in *Windsor* are binding precedent upon the District Court.

ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes, if confirmed as a District Court judge, I commit to give full force and effect to *Windsor* as well as any applicable holding of the Supreme Court or Third Circuit Court of Appeals.

c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

² *Id.* 2689-2690.

³ *Id.* 2691.

Response: Yes. All portions of the Supreme Court's decision in *Windsor* are binding precedent upon the District Court.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes, if confirmed as a District Court judge, I commit to give full force and effect to *Windsor* as well as any applicable holding of the Supreme Court or Third Circuit Court of Appeals.

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"⁴

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes. All portions of the Supreme Court's decision in *Windsor* are binding precedent upon the District Court.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes, if confirmed as a District Court judge, I commit to give full force and effect to *Windsor* as well as any applicable holding of the Supreme Court or Third Circuit Court of Appeals.

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"⁵

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes. All portions of the Supreme Court's decision in *Windsor* are binding precedent upon the District Court.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes, if confirmed as a District Court judge, I commit to give full force and effect to *Windsor* as well as any applicable holding of the Supreme Court or Third Circuit Court of Appeals.

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

18. Please describe with particularity the process by which these questions were answered.

Response: I received these questions from the Office of Legal Policy at the Department of Justice on July 31, 2014. I carefully reviewed the questions and analyzed the case law to prepare my responses. Thereafter, I submitted my answers to the Office of Legal Policy and made revisions before submitting my answers to the Committee.

19. Do these answers reflect your true and personal views?

Response: Yes, these answers entirely reflect my true and personal views.

**Senator Cruz
Questions for the Record**

**Mark A. Kearney,
Nominee, United States District Judge for the Eastern District of Pennsylvania**

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If confirmed as a District Court Judge, I would work to be fully prepared and scrupulously fair with each party always mindful of the crucial responsibility in this public service. Judicial philosophy requires strict adherence to precedent to ensure consistency. Judges must decide only the issues presented to avoid confusion through dicta on immaterial issues. I am committed to ensuring consistency and predictability based upon precedent of the United States Supreme Court and the United States Court of Appeals for the Third Circuit. I am not familiar enough with the judicial philosophies of Justices to identify a philosophy similar to one which I hope to apply, although I expect that each Justice worked hard to be fair and impartial.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed as a District Court Judge, I would strictly follow the cases from the Supreme Court and the Third Circuit which have examined the original public meaning of Constitutional provisions, including *District of Columbia v. Heller*, 554 U.S. 570 (2008).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a District Court Judge, I would be bound by the precedent of the United States Supreme Court and the Third Circuit and would not overrule any such precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: Consistent with my strict adherence to United States Supreme Court precedent, I will follow the Supreme Court's decision in *Garcia* and all holdings from the Supreme Court and the United States Court of Appeals for the Third Circuit regardless of any personal views.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: Analysis of Congress' Commerce Clause power, in accord with the holdings of the United States Supreme Court and the United States Court of Appeals for the Third Circuit,

focuses on economic activity, permitting regulation of the use of the channels of interstate commerce, instrumentalities of interstate commerce and activities in substantial relation to interstate commerce. For example, in *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court invalidated a statute identifying the carrying of fire arms in a school zone as a federal offense, and detailing the three broad categories of activity that Congress may regulate under the Commerce Clause. *See also*, *United States v. Kukafka*, 478 F.3d 531 (3d Cir. 2007) and *United States v. Whited*, 311 F.3d 259 (3d Cir. 2002).

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: A District Court Judge must closely scrutinize the executive orders or executive actions of a President to ensure, consistent with Supreme Court precedent, that such conduct stems either from an act of Congress or from the Constitution itself. In *Medellin v. Texas*, 552 U.S. 491, 524 (2008), the United States Supreme Court adopted the "tripartite" scheme detailed in Justice Jackson's concurrence in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) to distinguish the levels of scrutiny applied to a President's executive orders and actions. If I am confirmed as a District Court Judge, I would closely scrutinize the actions taken and the facts presented, and faithfully apply the precedent of the Supreme Court and the United States Court of Appeals for the Third Circuit.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: If confirmed as a District Court Judge, I would faithfully apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Third Circuit defining a right as fundamental for purposes of the substantive due process doctrine when it is "objectively, deeply rooted in this nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotations omitted). The Supreme Court requires judges to carefully understand "the asserted fundamental liberty interest". *Id.* at 721. I would strictly follow the Third Circuit holdings including in *McCurdy v. Dodd*, 352 F.3d 820 (3d Cir. 2003), to ensure that the fundamental guarantees of the due process doctrine are extended only as consistent with the precedent of the Supreme Court in *Glucksberg*.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: If confirmed as a District Court Judge, I would strictly adhere to the precedent of the United States Supreme Court and United States Court of Appeals for the Third Circuit in applying the two tiers of review above the rational basis review for Equal Protection Clause analysis. Specifically, the Supreme Court and United States Court of Appeals for the Third Circuit define an intermediate scrutiny for classifications such as gender that generally provide no sensible ground for differential treatment and a more strict scrutiny for classifications such as race, alienage and national origin that are "so seldom relevant to the achievement of any

legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy". *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985).

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed as a District Court Judge, personal expectations or predictions, if any, would have no role in my strict application of the binding precedent of the United States Supreme Court and United States Court of Appeals for the Third Circuit.

**Response of Joseph F. Leeson, Jr.
Nominee, United States District Judge for the Eastern District of Pennsylvania
To the Written Questions of Senator Al Franken**

1. On June 27, 2012, you participated in the “Let Religious Freedom Ring” forum at Notre Dame Church in Bethlehem, Pennsylvania. In your questionnaire, you stated that you have no notes, transcripts or recordings of this forum, but you did provide press coverage of the event. This coverage, from a July 12, 2012 article in *The A.D. Times*, quotes you as saying that the health care law is “un-American, unprecedented and blatantly unconstitutional.” The article goes on to say that you mentioned lawsuits filed against the health care law across the country, including suits filed in the Dioceses of Pittsburgh and Erie, Pennsylvania. And then the article reports that you “explained [that] the mandate violated the First Amendment, the Administrative Procedure Act, and the Religious Freedom Restoration Act.”

- a. It appears from this press coverage that these comments were made about the requirement that employers provide health insurance coverage for preventive health services, including contraception, to their employees, and not the individual mandate requiring people to purchase health insurance. During your hearing, Ranking Member Grassley asked you which of the exact elements of the health care law you were referring to in these comments. You responded that you were discussing “the Act overall” and that there was “a specific discussion on the mandate as well.” Please explain more specifically which provisions of law you were referring to when you made each of the comments noted above.**

Response: In making each of the comments noted above, I was referring to the requirement that employers provide to their employees health insurance coverage for preventive health services, specifically the contraception coverage requirement.

- b. In response to a question from Ranking Member Grassley about the statements you made at the June 27, 2012 forum, you said at your hearing:**

I was asked by one of my clients, the Catholic Diocese of Allentown, to represent it at this forum on the subject of the First Amendment and religious liberty. That was the context in which I was representing the client and made those remarks.

In your questionnaire, you state that you participated in this June 27, 2012 forum, but do not mention that you participated as an attorney representing a client. The press coverage of this event also simply states that you “provided the commentary at the Notre Dame session.”

Please describe with specificity in what capacity you provided these comments and any relevant attorney-client relationship you may have had at the time with the Catholic Diocese of Allentown.

Response: I provided the comments in my capacity as an attorney representing one of my clients, the Catholic Diocese of Allentown, a religious nonprofit organization, which has been a client of mine for approximately two decades and remains a client today.

- c. Do these comments reflect your view of the law at the time you made these comments? Do you continue to hold these views today?**

Response: These comments reflected my client's view of the law at the time I made them on June 27, 2012. If confirmed as a judge, I would be bound to apply Supreme Court and U.S. Court of Appeals for the Third Circuit precedents, regardless of any position I previously advocated on behalf of a client. For example, the U.S. Court of Appeals for the Third Circuit currently has pending before it an appeal raising the issue of the constitutionality of the requirement for religious nonprofit organizations to provide coverage for contraceptive services to their employees (*Zubik, et al. v. Burwell, et al.*, Nos. 14-1376 and 14-1377). If confirmed, I would apply any precedent established in this area of the law by the Supreme Court and the U.S. Court of Appeals for the Third Circuit.

- d. Do your comments reflect your view, then or now, of the requirement that employers cover contraceptive services as it applies to a particular employer or type of employer, or were you referring to the contraceptive requirement as applied to all employers?**

Response: The comments reflected my client's view on June 27, 2012 of the applicability to my client, a religious nonprofit organization, of the contraceptive services requirement. I was not referring to all employers. The U.S. Court of Appeals for the Third Circuit currently has pending before it an appeal raising the issue of the constitutionality of the requirement for religious nonprofit organizations to provide coverage for contraceptive services to their employees (*Zubik, et al. v. Burwell, et al.*, Nos. 14-1376 and 14-1377). If confirmed, I would apply any precedent established in this area of the law by the Supreme Court and the U.S. Court of Appeals for the Third Circuit.

- e. Will these past comments, whether they reflect your past or current views, have any effect on your ability to serve as an impartial judge?**

Response: No. No comments I have ever made on behalf of a client nor any arguments I have made on behalf of a client would have any effect on my ability to serve as an impartial judge. If confirmed, I would apply the law impartially to the

facts of each case and apply precedent established by the Supreme Court and the U.S. Court of Appeals for the Third Circuit.

- f. **If the U.S. Court of Appeals for the Third Circuit's decision in *Conestoga Wood v. Burwell*, 724 F.3d 377 (3d Cir. 2013) had remained binding precedent, would you have had any trouble following this decision?**

Response: I would not have had any trouble following the decision if it had remained binding precedent. If confirmed, I would not have any trouble following any precedent from the Supreme Court and the U.S. Court of Appeals for the Third Circuit.

2. On June 30, 2014, the Supreme Court held in *Burwell v. Hobby Lobby* that closely held for-profit corporations can refuse to provide health insurance coverage of a woman's contraceptive services. The opinion of the Court assumed without deciding that the government has a compelling interest in providing contraceptive services to women. In his concurrence, Justice Kennedy states that the contraceptive coverage requirement "furthers a legitimate and compelling interest in the health of female employees." And in her dissent, Justice Ginsburg, joined by Justices Sotomayor, Breyer, and Kagan, also concludes that the contraceptive coverage requirement "furthers compelling interests in public health and women's well being."

- a. **In your view, does the government have a compelling interest in ensuring that women receive contraceptive care?**

Response: If confirmed as a district court judge, any personal views on this or any other issue would be irrelevant. The majority opinion of the Supreme Court, in its entirety in *Burwell v. Hobby Lobby*, is binding precedent, and as such, is entitled to full force and effect by lower court judges unless and until overruled or modified by later Supreme Court decisions. Although the majority opinion did not explicitly decide whether the government has a compelling interest in providing contraceptive services to women, five justices suggested that the government has a compelling interest in the contraceptive coverage requirement (Justice Kennedy in his concurring opinion and Justices Ginsburg, Sotomayor, Kagan and Breyer in their dissenting opinion). If confirmed, I would follow the *Burwell v. Hobby Lobby* majority opinion in its entirety as I would any precedents from the Supreme Court and U.S. Court of Appeals for the Third Circuit.

- b. **As a judge, would you be able to follow binding precedent holding that the government has a compelling interest in requiring that group health plans provide contraceptive coverage without cost sharing notwithstanding your personal views on the matter?**

Response: If confirmed as a district court judge, I would not have any trouble

following any precedent from the Supreme Court and U.S. Court of Appeals for the Third Circuit.

3. At the June 27, 2012 forum, the press coverage states that you “encouraged everyone to . . . vote their conscience.” Judges sometimes have to make difficult decisions to uphold the law even when they personally disagree with the law or the outcome that could result from applying the law. How will you handle cases where the law conflicts with your conscience or personal beliefs?

Response: I would like to reiterate that I made these comments on behalf of a client and I well understand the difference between the role of an advocate and the role of a judge. The oath sworn by a judge to uphold the law requires that a judge respect and follow the law and all binding precedents, whether or not a judge personally agrees with the law or the outcome that could result from applying the law. If confirmed, I will be firmly committed to following that oath.

Response of Joseph F. Leeson, Jr.
 Nominee, United States District Judge for the Eastern District of Pennsylvania
 To the Written Questions of Senator Grassley

1. As solicitor for the city of Bethlehem, you made public comments regarding a federal lawsuit filed against the city. What concerns me is that you referred to this suit as a “nuisance suit” filed by a “bounty hunter” seeking a cut of the take. Is this an accurate representation of your view of whistleblowers?

Response: No.

a. If not, what in your view is the role of whistleblowers?

Response: Whistleblowers can play an important role in facilitating oversight and strengthening the system of checks and balances, by exposing waste, fraud and abuse. The 1986 update of the False Claims Act to include *qui tam* provisions, together with the 1989 Whistleblower Protection Act, have helped facilitate the recovery of substantial taxpayer funds that would otherwise have been lost to fraud.

b. If confirmed, how would you approach a *qui tam* case if it came before you?

Response: If confirmed, I would apply and give full effect to the *qui tam* provisions of the False Claims Act, Supreme Court precedent interpreting the False Claims Act and Third Circuit Court of Appeals precedent interpreting the False Claims Act.

2. You have been actively involved in local politics for many years. There is certainly nothing wrong with this activity, but should you be confirmed, your political history might concern future litigants.

a. Can you assure this Committee that, if confirmed, your decisions will remain grounded in the precedent and the text of the law rather than any underlying political ideology or motivation?

Response: Yes.

b. What further assurances or evidence can you give the Committee and future litigants that you will be fair to all who appear before you, if confirmed?

Response: Personal opinions, political and otherwise, should play no role in any judicial decision making. The justice system receives trust from the people it serves only when decisions are made based on the fair, impartial and evenhanded application of the law. If I am confirmed as a district court judge, all judicial decision making

would be fair, impartial and based exclusively on the objective application of the law and binding precedent to the facts in the record.

3. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is integrity. This includes a commitment to the rule of law and to ensuring a fair and impartial process in the resolution of cases. I believe I possess this attribute.

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should be patient, courteous and respectful. A judge's demeanor should promote respect for the rule of law, respect for the process and civility in the courtroom. I believe I meet this standard.

5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: If confirmed, I am committed to following Supreme Court and Third Circuit Court of Appeals precedents, and would give them full force and effect, even if I personally disagreed with such precedents. The obligation of a district court judge is to follow the precedents of higher courts, and this is a fundamental principle of law, which I would faithfully follow.

6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If the matter in question pertained to the interpretation of a statute, code or regulation, I would utilize the standard rules of statutory construction, beginning with an examination of the statute's plain language. I would also review and utilize any analogous decisions by the Supreme Court and the Third Circuit Court of Appeals. Although such decisions would only provide persuasive authority, I would also review and consider any applicable decisions by the other circuit courts or district courts.

7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: I would apply binding Supreme Court or Third Circuit Court of Appeals precedent, regardless of whether I believed the court erred in rendering its decision. District court judges are obligated to follow existing precedent until or unless that precedent is changed by an appellate court.

8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Statutes enacted by Congress are presumed to be constitutional. Only if Congress clearly exceeded its constitutional authority or if a statute conflicts with another constitutional provision, should a district court judge declare a particular statute unconstitutional.

9. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.

Response: No. It is not proper for judges to rely on foreign law or the views of the “world community” in interpreting the Constitution.

10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: It is never permissible for a judge’s decision to be influenced by any underlying political ideology or motivation. The rule of law is dependent on the judiciary making decisions based on facts and law, and not political ideology or other motivation. I am committed to following the rule of law which demands strict adherence to the principles of *stare decisis*.

11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: For approximately 30 years, I have frequently been requested to serve as an arbitrator in cases, and in some matters as a sole binding arbitrator. Those requests have been made by counsel whom I regularly opposed in litigation matters. I believe that I have established a record of someone who has the ability, experience and integrity to decide cases based on the facts and applicable law, someone who sets aside personal views and someone who is fair to all parties.

12. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would undertake to establish a process to promptly resolve cases on my docket. This would include holding a Rule 16 Conference after the filing of each case assigned to me, during which deadlines would be established. It would be my intention to actively monitor my cases, properly reviewing and scheduling any motions for argument or hearing, and disposing of those motions in a timely fashion. I would also seek to work closely and effectively with the United States Magistrate Judges to ensure that all cases are efficiently and properly advanced. An internal calendar alert system would also be established for compliance with the Speedy Trial Act.

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. Judges play an important role in controlling the pace and conduct of litigation. The quality of justice in the courts is in part a function of the efficiency and timeliness with which courts operate. I believe a judge should hold prompt Rule 16 Conferences, and establish reasonable deadlines for each case, to facilitate a fair determination on the merits in a timely fashion.

14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: As an arbitrator of cases for approximately 30 years, and as a tax hearing officer in cases over the last few years, I have gained experience in decision making that I believe will assist in the transition to judicial service. If confirmed, I would look to the legal briefs and arguments of legal counsel, read the applicable statutes and cases and review the relevant evidence. Because I have practiced primarily in the area of civil litigation I will need to become more familiar with criminal law, and I have already undertaken to read and study in this field in order to become more knowledgeable in this area.

15. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?

Response: I am unfamiliar with the full context in which these remarks were made. Judges are required to decide all cases by applying the law to the facts of the case. District court judges take an oath to decide cases based on the Constitution, applicable statutes, regulations, rules and higher court precedent, and if confirmed, that is what I would do. A judge’s personal views and beliefs must be set aside and play no role in decision making.

16. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

- a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹

¹ *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

- i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

Response: Yes.

- ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?

Response: The reference to “lawful marriages” is limited to those same-sex “marriages that are made lawful by the state”. *United States v. Windsor*, 133 S. Ct. 2675, 2695 (2013).

- iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

Response: Yes.

- iv. Are you committed to upholding this precedent?

Response: Yes.

- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes.

- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state

² *Id.* 2689-2690.

domestic relations law applicable to its residents and citizens.”³

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes.

- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes.

- e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁵

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes.

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

18. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on Thursday, July 31, 2014, drafted my answers to these questions and discussed them with the Department of Justice, Office of Legal Policy. I then made some revisions and finalized my answers for submission to the Committee.

19. Do these answers reflect your true and personal views?

Response: Yes.

**Response of Joseph F. Leeson, Jr.
Nominee, United States District Judge for the Eastern District of Pennsylvania
To the Written Questions of Senator Ted Cruz**

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger or Rehnquist Courts is most analogous with yours.

Response: If confirmed as a district court judge, my judicial philosophy would be to commit to the rule of law with a fair and impartial process, and a strict adherence to precedent. While I have read opinions from the Warren, Burger and Rehnquist Courts, I have not studied the individual Justices sufficiently to enable me to characterize a particular Justice's philosophy as analogous to my own.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed as a district court judge, I would follow all binding precedent of the Supreme Court and the Third Circuit Court of Appeals with respect to interpreting the Constitution. The Supreme Court has explained that public understanding of a text around the time of its enactment has a critical role in constitutional interpretation. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). I would follow the *Heller* decision and all other binding precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a district court judge, I would not and could not overrule precedent. I would follow precedent established by the Supreme Court and the Third Circuit Court of Appeals.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: This statement is part of a majority opinion of the Supreme Court in a case that has not been explicitly overruled. If confirmed as a district court judge, I would apply and follow the Supreme Court's decision in *Garcia* as well as other related Supreme Court and Third Circuit Court of Appeals precedents regarding state sovereign interests.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court in *United States v. Lopez*, 514 U.S. 549 (1995) and in *United States v. Morrison*, 529 U.S. 598 (2000), held that the federal laws under consideration were unconstitutional

because they exceeded congressional power under the Commerce Clause, and the Supreme Court noted the non-economic nature of the activity being subjected to federal regulation in holding those laws unconstitutional. However, neither of these two Supreme Court decisions held that the Commerce Clause may never extend to non-economic activity. In *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia's concurring opinion referenced the Necessary and Proper Clause in conjunction with the Commerce Clause to indicate that "Congress may regulate even non-economic local activity if that regulation is a necessary part of a more general regulation of interstate commerce". *Id.* at 37 (Scalia, J., concurring). If confirmed as a district court judge, I would follow Supreme Court and Third Circuit Court of Appeals precedent in deciding cases relating to the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The power of the Executive Branch of the federal government is conferred by both the Constitution and by specific acts of Congress. If a President were to exceed the scope of lawful power, a federal court presented with a justiciable case or controversy would be empowered to enjoin such unlawful actions, as established by a series of cases including *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) and *Medellin v. Texas*, 552 U.S. 491 (2008). If confirmed as a district court judge, I would follow Supreme Court and Third Circuit Court of Appeals precedent in this and all other areas of the law.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has determined that a right may be fundamental if it is expressly stated in the Bill of Rights, or if it is "deeply rooted in this Nation's history and tradition". *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations and quotations omitted). If confirmed as a district court judge, I would follow Supreme Court and Third Circuit Court of Appeals precedent in deciding cases regarding fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that certain classifications, such as race, religion, gender, alienage, national origin or classifications that burden a fundamental right, are subject to a higher level of scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). If confirmed as a district court judge, I will follow Supreme Court and Third Circuit Court of Appeals precedent in determining when to apply heightened scrutiny under the Equal Protection Clause.

Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have no expectations regarding the continued use or lack of use of racial preferences in public higher education. If confirmed as a district court judge, and if an issue concerning racial preferences were before me, I would apply *Grutter* and other relevant precedent, including *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), to the factual record before me.

Response of Joseph F. Leeson, Jr.
 Nominee, United States District Judge for the Eastern District of Pennsylvania
 To the Written Questions of Senator Dianne Feinstein

1. The Supreme Court reiterated in *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007): “Before viability, a State ‘may not prohibit any woman from making the ultimate decision to terminate her pregnancy.’ It also may not impose upon this right an undue burden, which exists if a regulation’s “purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.’” (quoting *Planned Parenthood Casey*, 505 U.S. 833, 878-79 (1992) (internal citations omitted)).

Thus, the Ninth Circuit has held that Arizona may not “prohibit abortion beginning at twenty weeks gestation, before the fetus is viable.” *Isaacson v. Horne*, 716 F.3d 1213, 1217 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 905 (2014). Concurring, conservative Judge Andrew Kleinfeld wrote: “The question for us is whether the current state of constitutional law prohibits the states from imposing that restriction. It does.” *Id.* at 1233 (Kleinfeld, J., concurring).

Will you faithfully apply the Supreme Court’s precedent on the issue of a woman’s right to choose, including the rule that any law the “purpose or effect [of which] is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability” is unconstitutional?

Response: Yes.

2. I would like to ask you some questions about some of your remarks from 2012, which I found very troubling.

An article from 2012 quotes you as stating: “The HHS mandate is ‘un-American, unprecedented and blatantly unconstitutional.’” The article also states: “[A]s Leeson explained, the mandate violated the First Amendment, the Administrative Procedure Act and the Religious Freedom Restoration Act, a federal law.”

In response to a written question from Senator Franken about these remarks, you stated:

“I was referring to the requirement that employers provide to their employees health insurance coverage for preventive health services, specifically the contraception coverage requirement.”

- a. As a strong supporter of the Women’s Health Amendment to the Affordable Care Act, I am gratified that, at your hearing, you acknowledged that your use of the word “un-American” was inappropriate.

Will you commit to showing an appropriate judicial temperament in which all parties who come before you are treated with respect and dignity, if you are confirmed?

Response: Yes.

- b. In your responses to Senator Franken's questions, you state that five justices of the Supreme Court in the recent *Hobby Lobby* decision "suggested that the government has a compelling interest in the contraceptive coverage requirement."**

Coverage for contraceptives can be critically important for women not only in the area of family planning, but also for critical health reasons.

Can you assure me that, if you are ever confronted with a case in which the necessity of contraception or contraceptive coverage is an issue, that you will take the time to understand the medical importance of contraception for women?

Response: Yes.

- c. You state in your written responses to Senator Franken: "I provided the comments in my capacity as an attorney representing one of my clients, the Catholic Diocese of Allentown, which has been a client of mine for approximately two decades and remains a client today."**
- i. Have you ever handled a case for this client, or any other client, challenging the validity of the requirement of the Affordable Care Act to which you were referring in your remarks, or any other provision of the Affordable Care Act? If so, please provide specifics of those cases.**

Response: No.

- ii. You state in your responses to Senator Franken that your remarks "reflected my client's view of the law at the time I made them on June 27, 2012."**

- 1. Please describe the process by which you arrived at the view about the contraceptive requirement that you expressed in these remarks.**

For example, did you evaluate the importance of contraception for women's health, and how did you do so? Did you review pertinent statutes, regulations, Supreme Court precedent, and Third Circuit precedent?

Response: The comments were made at a gathering of approximately thirty people. I did not conduct legal research because this was not a court hearing or legal proceeding. A short time before the gathering, I reviewed materials supplied to me by my client setting forth the client's position on the law. I based my comments on a review of these client materials. If I were fortunate enough to be confirmed, no comments or arguments I have ever made on behalf of a client during my time in private practice would have any effect on my ability to serve as an impartial judge. I would apply the law impartially to the facts of each case and apply precedent established by the Supreme Court and the U.S. Court of Appeals for the Third Circuit.

- 2. Did you make clear in your remarks at the time that your comments were given as an attorney on behalf of a client, and not as your personal views?**

Response: Yes.

- d. The recusal statute, 28 U.S.C. § 455, provides in pertinent part that “[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”**

You have publicly stated that the legal requirement to which you were referring in your remarks is “unprecedented and blatantly unconstitutional.” If any challenge to that requirement (or any regulations applying that requirement) were to before you if you are confirmed, would you recuse yourself from the case?

Response: In order for the public to have confidence in our courts, judges must adhere to the highest ethical standards – and that includes careful consideration and application of the rules governing recusal. If confirmed and confronted with a case involving this law (or any regulations applying it), I would carefully review and address any real or potential conflict in accordance with the provisions of 28 U.S.C. §455, the Code of Conduct for United States Judges, including Canon 3 of the Code, as well as all applicable laws, orders and rules of the United States Courts. If my impartiality might reasonably be questioned on this or any other issue, I would recuse.

Senator Grassley
Questions for the Record

Gerald Pappert,
Nominee: U.S. District Judge for the Eastern District of Pennsylvania

1. **You have served in a variety of legal settings, including as an associate and partner of various law firms, as Executive Vice President, General Counsel and Secretary of a corporation, and as First Deputy Attorney General and the Attorney General of the Commonwealth of Pennsylvania. How have these legal experiences helped prepare you for the federal bench?**

Response: My legal experiences have helped prepare me for the federal bench in a number of ways. I have represented clients in private practice and learned how important it is for lawyers and judges to demonstrate to the litigants that the process is available and fair to all. In the Attorney General's Office, I learned how law intersects with government and public policy. As the General Counsel of a public company, I learned how the law pertains to, and often dictates, the company's business strategy. I also gained an appreciation for the rights of the shareholders and the duty a company's management owes to the entity's public owners.

Most importantly, my career has given me an appreciation for all aspects of the civil and criminal justice systems. I have been a prosecutor and I have also done some criminal defense work. In private practice I primarily represented defendants in civil litigation, though I did have some smaller plaintiffs' cases as well. As Attorney General, I brought a number of cases on behalf of the Commonwealth and its citizens. As General Counsel of a public company, I oversaw litigation where the company was a plaintiff as well as a defendant. These experiences have combined to teach me that there are two sides to every issue. I know to give equal weight to the rights and positions of the plaintiff or prosecutor and the defendant. I have learned to keep an open mind, no matter the issue, and to never prejudge anyone's position. More than anything else, I believe this broad background in the law has helped prepare me to be a good federal judge.

2. **Over the course of your career, you have been active in politics; and you have donated to candidates of both parties. Please provide answers to the following questions:**

- a. **If confirmed, are you confident that you will be able to set aside your political views from how you would apply the law to the facts of any given case?**

Response: Yes. If I am fortunate enough to be confirmed, I am confident I would be able to set aside any views I might have, political or otherwise, from how I apply the law to the facts in any case before me.

- b. **In your view, should political considerations influence judicial decision-making in any way, shape or form?**

Response: No. Political considerations, however defined, should not influence judicial decision-making in any way. A judge should apply the law, including all applicable precedent, to the facts of the case and make the best decision possible based on the law and the facts.

- c. **In your view, what are the differences in responsibility between an advocate and a judge?**

Response: An advocate's responsibility is to take one side of an issue – his or her client's – and argue that position. While being cognizant of the potential strengths and weaknesses of the other side's position, an advocate is in a way closed minded to any arguments against those of the client. A judge, by contrast, must be the antithesis of an advocate. A judge's responsibility is to keep an open mind and give equal weight to all sides, making a decision only after giving each side equal consideration and applying the facts of the case to the applicable law, including all precedent.

3. **What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?**

Response: Arrogance, poor temperament, disregard for the anxieties and fears of the litigants and a failure to understand the pressures and responsibilities of the lawyers are characteristics I have seen in judges which I am determined to avoid if I have the honor to be confirmed as a District Court judge.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: There are many attributes that are important for a good judge to possess, including integrity, knowledge of the law, good temperament, the ability to keep an open mind and be fair, and a thoughtful, conscientious and dedicated approach to the job. I respectfully believe that I possess these and other important attributes.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge must be humble, patient, respectful and courteous to the lawyers and litigants who come before him or her as well as to the jurors who sacrifice their time to serve a vital role in our system of justice. These qualities, along with the ability to be fair and impartial, combine to shape a judge's temperament. I respectfully believe that I possess these qualities.

6. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I respect and understand the role of *stare decisis* in our legal system. Adhering to this principle helps ensure the stability and reliability that is crucial to, among others, litigants, lawyers and judges at all levels. If confirmed, I would remain fully committed to following Supreme Court and Third Circuit precedent, whether or not I personally disagree with the precedent at issue.

7. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

- a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹**

- i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Response: Yes. This statement is part of the holding in *Windsor*.

- ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

Response: By "lawful marriages" Justice Kennedy was referring to "same sex marriages made lawful by the state".

- iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes.

- iv. **Are you committed to upholding this precedent?**

Response: Yes. If confirmed, I will faithfully uphold all Supreme Court precedent.

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²
- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
- Response: Yes. This and all other portions of the Court’s opinion are binding precedent entitled to full force and effect.
- ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- Response: Yes.
- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³
- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
- Response: Yes. This and all other portions of the Court’s opinion are binding precedent entitled to full force and effect.
- ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- Response: Yes.
- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴
- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
- Response: Yes. This and all other portions of the Court’s opinion are binding precedent entitled to full force and effect.

² *Id.* 2689-2690.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

- ii. **Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes.

- e. **Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁵**

- i. **Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. This and all other portions of the Court’s opinion are binding precedent entitled to full force and effect.

- ii. **Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes.

- 8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In the absence of controlling precedent that is dispositive on an issue with which I am presented, I would look to the text of the statute or constitutional provision at issue, canons of statutory construction adopted by the Supreme Court and Third Circuit, and any guidance or persuasive authority promulgated by the Supreme Court and Third Circuit. If necessary, I would also look to related or analogous decisions of those and other courts.

- 9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If I am given the privilege of serving as a judge on the United States District Court, my personal view or belief that the Supreme Court or Third Circuit had incorrectly decided a matter would not be relevant. I would follow Supreme Court and/or Third Circuit precedent and apply that precedent to the issue or case before me.

- 10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

⁵ *Id.* (internal citations omitted).

Response: Statutes enacted by Congress are presumed to be constitutional. It is appropriate for a federal court to declare a statute unconstitutional only where the constitutional question cannot be avoided and the statute is clearly inconsistent with the Constitution. Statutes should be interpreted to avoid constitutional problems where more than one plausible interpretation is possible. *Clark v. Martinez*, 543 U.S. 371 (2005).

- 11. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: No. The Constitution is a domestic document that should be interpreted based on domestic sources. If I am confirmed for a seat on the District Court, I would never rely on foreign law or the views of the “world community” unless required to do so by Third Circuit or Supreme Court precedent.

- 12. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: The United States Code, 28 U.S.C. §455, and the Code of Conduct for United States Judges require a judge to be impartial and objective and to decide matters absent any political ideology or motivation. Political ideology or motivation should never affect the way a judge decides an issue or case. Adhering to precedent as opposed to any personal, ideological or political views is the best and most appropriate way to ensure stability and predictability in our judicial system. I will do that.

- 13. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: A judge’s personal views have no place in the performance of his or her duties, particularly judicial decision making. I can assure this Committee that if confirmed I would administer justice fairly and impartially and would not allow any personal views to interfere with my solemn obligations to faithfully apply precedent and make the best decisions I can make based on the law and the facts before me.

- 14. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I would be actively involved in managing my caseload, working with the Clerk of the Court and all other appropriate court personnel. I would establish policies and procedures governing the conduct of matters before me and would confer as needed with counsel to ensure that my docket is run effectively and efficiently, consistent with my obligations to be fair, impartial and thorough. I would participate with counsel if necessary to settle discovery and pre-trial disputes, narrow the issues for trial or be a constructive participant in evaluating cases for potential settlement.

15. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, judges have an important role to play in controlling the pace and conduct of litigation. If confirmed, I would proceed as outlined in my previous answer to ensure that all matters to which I am assigned are resolved as thoroughly, fairly and efficiently as possible.

16. **As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: I have not yet had the privilege of serving as a judge. If confirmed, I would reach decisions by applying the facts of the matter before me to the law, particularly Third Circuit and Supreme Court precedent, and making the best decisions I can make in a fair and impartial manner.

17. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

- a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

- 18. Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on July 31, 2014. After conducting research and drafting my responses, I reviewed those responses with a representative of the Office of Legal Policy in the Department of Justice. I continued reviewing and editing my responses on September 2, 2014 and then authorized the Office of Legal Policy to submit them on my behalf to the Committee.

- 19. Do these answers reflect your true and personal views?**

Response: Yes.

Questions for the Record
Senator Ted Cruz

Gerald Pappert,
Nominee: U.S. District Judge for the Eastern District of Pennsylvania

1. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: I do not know enough about the full body of work of any single Justice to be able to state whose judicial philosophy is most analogous to mine. If I am fortunate enough to be confirmed for a seat on the United States District Court, I would handle each matter to which I am assigned with an open mind and in a fair and impartial manner. I would faithfully follow Supreme Court and Third Circuit precedent with a respect for the principles of judicial restraint and an understanding of the separation of powers and the proper role of an Article III judge. I would apply the law, including all precedent, to the facts of the case and make the best decision I can.

2. **Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: The Supreme Court looked to original public meaning when interpreting a constitutional provision in *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I would faithfully follow all Supreme Court precedent regarding the appropriate method to interpret the constitutional provision at issue, including looking to the Constitution's text and original sources such as the Federalist Papers.

3. **If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If I am confirmed to serve on the United States District Court, I would be bound by Supreme Court and Third Circuit precedent. There are no circumstances under which I would attempt to overrule binding precedent.

4. **Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: This quote from the *Garcia* case constitutes binding precedent. If confirmed, I would faithfully follow it, as well as all other binding precedent from the Supreme Court and Third Circuit Court of Appeals, such as *New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997).

5. **Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: Supreme Court jurisprudence on the scope of the Commerce Clause has focused on economic activity and noted that permissible categories of regulation under the Commerce Clause include the use of the channels of interstate commerce, instrumentalities of interstate commerce and activities with a substantial relation to interstate commerce. The Court has struck down statutes absent a nexus to economic activity. See *United States v. Morrison*, 529 U.S. 598 (2000) and *United States v. Lopez*, 514 U.S. 549 (1995).

At least one Justice on the Court has opined that Congress' power under the Commerce Clause may extend to regulation of non-economic activity "if that regulation is a necessary part of a more general regulation of interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J. concurring.)

As a District Court judge, I would be bound by the rulings of the Third Circuit and Supreme Court on the scope and limitations of the Commerce Clause and I would follow that and all other precedent faithfully.

6. **What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court articulated the judicially enforceable limits on the President's authority to issue executive orders or actions. The President's authority must derive from an Act of Congress or the Constitution. If confirmed, I would follow Supreme Court and Third Circuit precedent when deciding any case involving executive orders or actions.

7. **When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: The Supreme Court has defined a right as "fundamental" for purposes of the substantive due process doctrine when it is "objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and internal quotation marks omitted.) If confirmed, I would follow all Supreme Court and Third Circuit precedent when deciding whether a right is "fundamental" for substantive due process purposes.

8. **When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: The Supreme Court has defined two levels of heightened scrutiny or scrutiny above a "rational basis" review. Under intermediate scrutiny, applied to classifications such as gender that often bear "no relation to ability to perform or contribute to society", the state action must serve important governmental objectives and must be substantially related to the achievement of those objectives. To survive a strict scrutiny analysis,

applied to classifications such as race, alienage and national origin, the state action must be narrowly tailored to a compelling governmental interest. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-441 (1985). If confirmed, I would faithfully apply Supreme Court and Third Circuit precedent to determine the level of scrutiny applicable to any matter that comes before me.

9. **Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).**

Response: In her majority opinion in *Grutter*, Justice O'Connor anticipated that the use of racial preferences would no longer be necessary in public higher education 25 years after that decision. I do not have any personal expectations in this regard. If confirmed, I would follow the Court's holding in *Grutter*, as well as any additional guidance and precedent such as *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).



AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary

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VIA EMAIL AND FIRST-CLASS MAIL

January 17, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: **Nomination of Stephen Bough to the United States
District Court for the Western District of Missouri**

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Stephen Bough who has been nominated for a position on the United States District Court for the District of Nevada. A substantial majority of the Committee is of the opinion that Mr. Bough is Qualified and a minority of the Committee is of the opinion that Mr. Bough is Not Qualified for this position.

A copy of this letter has been provided to Mr. Bough.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Stephen Bough, Esq. (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

January 17, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on December 20, 2013.



900 W. 48th Place, Suite 900, Kansas City, MO 64112-1895 • 816.753.1000

October 20, 2014

John M. Kilroy, Jr.
(816) 374-0584
(816) 817-0203 Direct Fax
jkilroyjr@polsinelli.com

Senator Harry Reid
522 Hart Senate Office Building
United States Senate
Washington, DC 20510

Re: Stephen Bough

Dear Senator Reid:

I write this letter in support of Steve Bough's appointment as a Federal Judge. Candidly, Steve's politics are slightly more liberal than mine, and his law practice is more plaintiff oriented than mine. However, from my personal experience, I believe that Steve Bough is more of a moderate, as I believe I am, and I do not find his practice as a plaintiff's lawyer or his politics a factor in my support.

In addition to a very successful law career, Steve has been incredibly active professionally, serving as president of the Young Lawyers' Section of the Kansas City Metropolitan Bar Association; a member of the Board of Directors of the KCMBA; a member of the Board of Governors of the Missouri Bar Association; and a long standing very committed member of the Board of Lawyers Encouraging Academic Performance (LEAP). His other activities are probably well known to you in prior materials that you have been provided.

On the LEAP Board I have witnessed Steve's compassion and tireless efforts to benefit the children of Operation Breakthrough. In addition to raising money for the neediest kids in Kansas City, Steve has been there with the kids at pancake breakfasts, distributing school supplies and helping kids reads.

I have always found Steve to be dedicated, compassionate and professional in his demeanor and approach. I believe that he would have a good judicial demeanor and would consider him someone who would fairly consider a matter that I was advocating on behalf of one of my clients if he were the judge.

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Chicago Dallas Denver Kansas City Los Angeles New York Phoenix St. Louis Washington, D.C. Wilmington

Polsinelli PC, Polsinelli LLP in California

49060898.3

1199



October 20, 2014
Page 2

Please do not hesitate to contact me if I can provide any additional information in support of Steve's consideration.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John M. Kilroy, Jr.", written in a cursive style.

JOHN M. KILROY, JR.

JK:cam

1200



900 W. 48th Place, Suite 900, Kansas City, MO 64112-1895 • 816.753.1000

October 20, 2014

John M. Kilroy, Jr.
(816) 374-0584
(816) 817-0203 Direct Fax
jkilroyjr@polsinelli.com

Senator Mitch McConnell
317 Russell Senate Office Building
United States Senate
Washington, DC 20510

Re: Stephen Bough

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October 20, 2014
Page 2

Please do not hesitate to contact me if I can provide any additional information in support of Steve's consideration.

Very truly yours,

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JOHN M. KILROY, JR.

JK:cam

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October 20, 2014

John M. Kilroy, Jr.
(816) 374-0584
(816) 817-0203 Direct Fax
jkilroyjr@polsinelli.com

Senator Charles Grassley
135 Hart Senate Office Building
United States Senate
Washington, DC 20510

Re: Stephen Bough

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October 20, 2014
Page 2

Please do not hesitate to contact me if I can provide any additional information in support of Steve's consideration.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John M. Kilroy, Jr.", written over the typed name.

JOHN M. KILROY, JR.

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900 W. 48th Place, Suite 900, Kansas City, MO 64112-1895 • 816.753.1000

October 20, 2014

John M. Kilroy, Jr.
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437 Russell Senate Building
United States Senate
Washington, DC 20510

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October 20, 2014
Page 2

Please do not hesitate to contact me if I can provide any additional information in support of Steve's consideration.

Very truly yours,

A handwritten signature in dark ink, appearing to read "JMK / Kilroy Jr", written over a horizontal line.

JOHN M. KILROY, JR.

JK:cam



October 21, 2014

Robert T. Adams

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Sent Via Facsimile: (202) 224-6020
With Original to Follow Via First Class, U.S. Mail
Senator Charles Grassley
135 Hart Senate Office Building
United States Senate
Washington, DC 20510

RE: Stephen R. Bough for Federal District Court Judge

Dear Senator Grassley:

I am honored to write this letter in support of Stephen R. Bough's appointment to the Judiciary to serve as a Federal District Court Judge for Western District of Missouri ("WDMO").

By way of background, I am a Senior Partner at the national law firm of Shook, Hardy & Bacon with approximately 475 attorneys. I am on the firm's Executive Committee. I am a member of the American College of Trial Lawyers. I have practiced law for 27 years. I am also a Republican and I practice on the civil defense side of litigation. I have a unique perspective of Mr. Bough because we have and continue to work on lawsuits where we represent opposing clients. I have also encountered Mr. Bough in political settings where we are on the opposite side of issues.

Mr. Bough has all the qualities desired in a Federal District Court Judge. He has a deep respect for the role of the Judiciary and understands that the decisions of the Judiciary ultimately affect the community and the rule of law. He takes a thoughtful and fair approach to every case, a skill that will serve him well as a Judge. Mr. Bough maintains his professionalism in every setting. I have had many opportunities to watch him in and out of court, and he is always prepared, composed, and respectful to everyone.

Mr. Bough has a tireless work ethic. He is committed to pursuing excellence at work and in his community. Mr. Bough is also a husband and father, and even with his heavy workload, he is an involved parent. He balances all aspects of his life well. Mr. Bough would be an excellent addition to the Federal District Court Bench for the WDMO.

I highly recommend that you appoint him to this position.

Sincerely,

Robert T. Adams

RTA:jna

Denver
Geneva
Houston
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October 21, 2014

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October 21, 2014

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Dear Senator Leahy:

I am honored to write this letter in support of Stephen R. Bough's appointment to the Judiciary to serve as a Federal District Court Judge for Western District of Missouri ("WDMO").

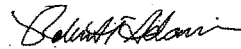
By way of background, I am a Senior Partner at the national law firm of Shook, Hardy & Bacon with approximately 475 attorneys. I am on the firm's Executive Committee. I am a member of the American College of Trial Lawyers. I have practiced law for 27 years. I am also a Republican and I practice on the civil defense side of litigation. I have a unique perspective of Mr. Bough because we have and continue to work on lawsuits where we represent opposing clients. I have also encountered Mr. Bough in political settings where we are on the opposite side of issues.

Mr. Bough has all the qualities desired in a Federal District Court Judge. He has a deep respect for the role of the Judiciary and understands that the decisions of the Judiciary ultimately affect the community and the rule of law. He takes a thoughtful and fair approach to every case, a skill that will serve him well as a Judge. Mr. Bough maintains his professionalism in every setting. I have had many opportunities to watch him in and out of court, and he is always prepared, composed, and respectful to everyone.

Mr. Bough has a tireless work ethic. He is committed to pursuing excellence at work and in his community. Mr. Bough is also a husband and father, and even with his heavy workload, he is an involved parent. He balances all aspects of his life well. Mr. Bough would be an excellent addition to the Federal District Court Bench for the WDMO.

I highly recommend that you appoint him to this position.

Sincerely,


 Robert T. Adams

RTA:jna

Denver
 Geneva
 Houston
 Kansas City
 London
 Miami
 Orange County
 Philadelphia
 San Francisco
 Seattle
 Tampa
 Washington, D.C.



October 21, 2014

Sent Via Facsimile: (202) 224-2499
With Original to Follow Via First Class, U.S. Mail
 Senator Mitch McConnell
 317 Russell Senate Office Building
 United States Senate
 Washington, DC 20510

Robert T. Adams

2555 Grand Blvd.
 Kansas City
 Missouri 64108-2613
 816.474.6550
 816.559.2230 DD
 816.421.5547 Fax
 rtadams@shb.com

RE: Stephen R. Bough for Federal District Court Judge

Dear Senator McConnell:

I am honored to write this letter in support of Stephen R. Bough's appointment to the Judiciary to serve as a Federal District Court Judge for Western District of Missouri ("WDMO").

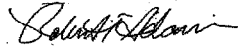
By way of background, I am a Senior Partner at the national law firm of Shook, Hardy & Bacon with approximately 475 attorneys. I am on the firm's Executive Committee. I am a member of the American College of Trial Lawyers. I have practiced law for 27 years. I am also a Republican and I practice on the civil defense side of litigation. I have a unique perspective of Mr. Bough because we have and continue to work on lawsuits where we represent opposing clients. I have also encountered Mr. Bough in political settings where we are on the opposite side of issues.

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I highly recommend that you appoint him to this position.

Sincerely,


 Robert T. Adams

RTA:jna

Denver
 Geneva
 Houston
 Kansas City
 London
 Miami
 Orange County
 Philadelphia
 San Francisco
 Seattle
 Tampa
 Washington, D.C.

1210

HUSCH BLACKWELL

Maurice A. Watson
Chairman

4801 Main Street, Suite 1000
Kansas City, MO 64112
Direct: 816.983.8164
Fax: 816.983.8080
maurice.watson@huschblackwell.com

November 12, 2014

The Honorable Patrick Leahy
437 Russell Senate Building
United States Senate
Washington, DC 20510
VIA FAX: 202-224-3479

The Honorable Mitch McConnell
317 Russell Senate Office Building
United States Senate
Washington, DC 20510
VIA FAX: 202-224-2499

The Honorable Charles Grassley
135 Hart Senate Office Building
United States Senate
Washington, DC 20510
VIA FAX: 202-224-6020

The Honorable Harry Reid
522 Hart Senate Office Building
United States Senate
Washington, DC 20510
VIA FAX: 202-224-7327

Re: Stephen Bough

Dear Senators:

Having worked in Washington a number of years ago as an aide to Senator Jack Danforth on judicial appointments, I have the highest respect for the Senate's role in advising and giving consent on Presidential appointments to the federal bench, and your thoroughness in evaluating nominees must be commended.

I am chairman of the Husch Blackwell firm and understand that questions have recently been raised about the conduct of Stephen Bough in a federal court case, *Marcus Champion, et al. v. High-Tech Institute, Inc.*, in which our firm represented the opposing party. I have known Steve for 20 or more years. While I have never had a case with or against him, I know his reputation. Throughout his law practice, Steve has represented plaintiffs in litigation in federal and state court. Before practicing, Steve served as a law clerk to United States District Judge Scott Wright. Steve enjoys a reputation for effectiveness, diligence and integrity as a lawyer. I am aware of nothing in his background that would put in question his reputation for the highest level of professional conduct in the practice of law.

As you know, Steve entered his appearance representing a plaintiff in *Marcus Champion, et al. v. High-Tech Institute, Inc.* After entering his appearance, Judge Wright, the senior judge providing pre-trial management of the case, recused himself. I understand that the timing of Judge Wright's recusal may have created a question regarding whether Steve's entry of

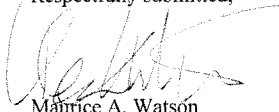
1211

HUSCH BLACKWELL

appearance in the case was motivated by some improper purpose. Based upon Steve's reputation as an attorney in this community, an inference of an improper motive for his appearance would be misguided. That Steve joined with Gene Graham in representing the plaintiffs in the case was not unusual given their preexisting relationship, and Steve's explanation of his role in the case is both persuasive and credible.

I am happy to provide any additional information that may be helpful to you or your colleagues.

Respectfully submitted,



Maurice A. Watson
Chairman

MAW/acf

1212

Matthew V. Bartle
10817 Wildflower Drive
Lee's Summit, MO 64086

October 16, 2014

Sen. Harry Reid
522 Hart Senate Office Building
United States Senate
Washington, DC 20510

Re: Judicial Nominee Stephen Bough

Dear Senator Reid,

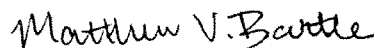
I write to support the nomination of Stephen Bough to the United States District Court for the Western District of Missouri.

I have known Steve Bough for at least 10 years and first met him when I was serving in the Missouri legislature. I spent eight years serving in the Missouri Senate, where I was Chairman of the Missouri Senate Judiciary Committee, and four years in the Missouri House. I am a Republican.

Although we were leaders in different parties, we quickly became friends. I thought Steve was honest and candid. He was willing to listen, but also able to understand, which I believe sets him apart. Advancing the cause of my district in the state legislature required me to work with Democrats who lead the county and several of the cities in my district. My friendship with Steve opened doors to these elected officials and facilitated vital communication. I considered him a key pragmatic player who wanted to get things done.

I urge the Senate to confirm Steve Bough's nomination. I think he would be an excellent federal judge.

Sincerely,

A handwritten signature in dark ink that reads "Matthew V. Bartle". The signature is written in a cursive, slightly slanted style.

Matthew V. Bartle

LATHROP & GAGE_{LLP}

JEAN PAUL BRADSHAW II
DIRECT LINE: 816.460.5507
EMAIL: JBRADSHAW@LATHROP&GAGE.COM
WWW.LATHROP&GAGE.COM

2345 GRAND BOULEVARD, SUITE 2200
KANSAS CITY, MISSOURI 64108-2618
PHONE: 816.292.2000
FAX: 816.292.2001

October 16, 2014

Sen. Patrick Leahy
United States Senate
437 Russell Senate Building
Washington, D.C. 20510

Sen. Charles Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Sen. Mitch McConnell
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Sen. Harry Reid
United States Senate
522 Hart Senate Office Building
Washington, D.C. 20510

**Re: Nomination of Stephen Bough to the U.S. District Court for the
Western District of Missouri**

Dear Senators:

I am writing regarding the nomination of Stephen Bough to fill a vacancy on the United States District Court for the Western District of Missouri. I understand his nomination has been voted out of committee and is being considered for a final vote.

I am a lawyer who represents almost exclusively defendants in civil cases. I am also a strong Republican. I served as the Presidentially-appointed United States Attorney for the Western District of Missouri during the administration of President George H.W. Bush and served in leadership positions on various Department of Justice Committees. I am a former Republican County Chairman and have worked in a number of Republican campaigns.

I have known Steve Bough for more than ten years. He is a tough advocate, but very fair and professional in his dealings and has great respect for the judicial system. I have no doubt that he would be fair and impartial in his dealings with attorneys and parties in his court, regardless of whether they were plaintiffs or defendants. He would be an outstanding addition to the District Court here and I urge you to send his nomination to the floor.

Thank you for your consideration of this.

Very truly yours,

LATHROP & GAGE LLP

By: 
Jean Paul Bradshaw II

CALIFORNIA COLORADO ILLINOIS KANSAS MASSACHUSETTS MISSOURI NEW YORK

22308480v1

1214

SANDERS WARREN
& RUSSELL LLP

40 CORPORATE WOODS
9401 INDIAN CREEK PARKWAY, SUITE 1250 • OVERLAND PARK, KANSAS 66210
TEL: 913-234-6100 • FAX: 913-234-6199
swrllp.com

KANSAS CITY, MISSOURI
by Appointment Only

SPRINGFIELD, MISSOURI

William H. Sanders
913-234-6101
b.sanders@swrllp.com

October 16, 2014

Senator Patrick Leahy
437 Russell Senate Building
United States Senate
Washington, DC 20510

Senator Charles Grassley
135 Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Senator Mitch McConnell
317 Russell Senate Office Building
United States Senate
Washington, DC 20510

Senator Harry Reid
522 Hart Senate Office Building
United States Senate
Washington, DC 20510

RE: Candidacy of Stephen R. Bough for
Federal Judge Position in Kansas City, Missouri

Dear Senators:

I just read an article in the Missouri Lawyers Weekly referencing Steve Bough's blog posts several years ago, and the author's suggestion that these posts might somehow have an impact on his candidacy for the bench. I certainly hope not. I have known Steve Bough professionally and personally for well over 10 years. I am proud to identify myself as a moderate Republican, and can assure you that Steve Bough has never – to my knowledge – allowed any political leanings ever to affect his objectivity or his relationship with judges and other attorneys.

I am the senior partner of a law firm that primarily does civil defense work. I have never hesitated referring individuals with potential civil claims to Steve Bough, because I think he has the highest integrity and seeks fair resolutions for his clients, and can be trusted to superbly represent his clients.

October 16, 2014

Page | 2

I should also point out that I originally supported Steve Bough for this judicial position. A federal judge needs to be smart, hardworking, experienced, energetic and impartial. I can think of no better person to be appointed to the federal bench than Steve Bough, which is why so many other defense lawyers have also supported him.

I hope Steve Bough is given full consideration for this judicial position.

Best regards,

A handwritten signature in cursive script, appearing to read "William H. Sanders, Jr.", written in dark ink.

William H. Sanders, Jr.

WHS/srd

1216

LAW OFFICES

FRANKE SCHULTZ & MULLEN

A PROFESSIONAL CORPORATION

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www.fsmllawfirm.com

TWO CITY PLACE- SECOND FLOOR
ST. LOUIS, MISSOURI 63141
TELEPHONE (314) 812-4780
FACSIMILE (314) 812-2505

October 17, 2014

Via Telefax and Regular US Mail

(202) 224-3479

The Honorable Patrick Leahy
437 Russell Senate Building
Washington, DC 20510

Re: Judicial Nomination of Stephen Bough, United States District Court, Western
District of Missouri

Dear Senator Leahy:

I am writing to you as a result of a recent media report questioning the judicial fitness of Stephen Bough. As I am sure you are aware, opponents of Mr. Bough's nomination have pointed to various blog posts made by Mr. Bough before he was nominated to the bench and have questioned whether he can exercise appropriate judicial temperament and act impartially as a U.S. District Court Judge. I think it is extremely important to note that these blog posts were made before Mr. Bough was nominated to the bench and all posts were made in a political context, not a judicial context.

By way of background, I have been practicing as a civil defense attorney in Missouri for nearly 25 years. I represent insurance companies and self-insured corporations in litigated matters. Steve Bough has been opposing counsel to me and other members of my firm on numerous cases over the years. Additionally, I have been active in Republic Party politics in Missouri for over 30 years. I have worked on the campaigns of Senators Ashcroft and Bond, Congressmen Mel Hancock and Roy Blunt as well as numerous state level Republican campaigns. Also, in 1987, I was in charge of Jack Kemp's presidential campaign in southwest Missouri. I am unabashed, staunch conservative.

Despite the fact that I am a civil defense lawyer and a staunch conservative, I wholeheartedly support Stephen Bough's nomination to the United States District Court for the Western District of Missouri. Mr. Bough is an accomplished trial attorney. He understands the intricacies of civil litigation. His professionalism and ethics are above reproach. Mr. Bough understands the need for judicial impartiality and evenhandedness. I have no reservations whatsoever in asking you to fully support Mr. Bough's nomination.

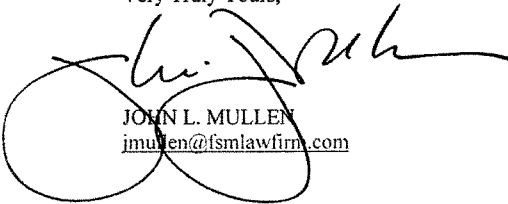
1217

FRANKE SCHULTZ & MULLEN

The Honorable Patrick Leahy
October 17, 2014
Page 2

If you have any questions or if I can be of assistance to you in this or any other matter,
please do not hesitate to contact me directly.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "John L. Mullen", is written over a large, stylized circular flourish or "O" shape.

JOHN L. MULLEN
jmullen@fsmllawfirm.com



CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

FIRST CIRCUIT
Paul E. Summit
Suite 2300
1 Post Office Square
Boston, MA 02109-2125

SECOND CIRCUIT
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199 Water Street, Fl. 6
New York, NY 10038-3526

THIRD CIRCUIT
Carol Corbin Walker
1 Riverfront Plaza, Fl. 16
1037 Raymond Boulevard
Newark, NJ 07102-5423

FOURTH CIRCUIT
Willis P. Whitchard
501 Eastowne Drive #130
Chapel Hill, NC 27514

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
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1101 College Street
Bowling Green, KY 42302-0770

SEVENTH CIRCUIT
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Suite 6600
283 South Wacker Drive
Chicago, IL 60606-6307

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NINTH CIRCUIT
Edith N. Marshall
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

Sheryl J. Wilbert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Isch
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4556

ELEVENTH CIRCUIT
Peter Piroto
Suite 800
25 West Flagler Street
Miami, FL 33130-1720

D.C. CIRCUIT
Ronald A. Coss
10560 Fox Forest Drive
Great Falls, VA 22066-1743

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
Denise A. Cardman
202-662-1761
mise.cardman@americanbar.org

AMERICAN BAR ASSOCIATION

Please respond to:

Bettina B. Plevan, Esq.
Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

VIA EMAIL AND FIRST-CLASS MAIL

June 16, 2014

RECEIVED JUN 25 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Wendy Beetlestone to the United States
Court for the Eastern District of Pennsylvania

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Wendy Beetlestone who has been nominated for a position on the United States District Court for the Eastern District of Pennsylvania. The Committee is of the opinion that Ms. Beetlestone is Unanimously Qualified for this position.

A copy of this letter has been provided to Ms. Beetlestone.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Wendy Beetlestone, Esq. (via email)
The Honorable W. Neil Eggleston (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

June 16, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on June 16, 2014.



CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

FIRST CIRCUIT
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Boston, MA 02109-2129

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199 Water Street, Fl. 6
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THIRD CIRCUIT
Karl Corbin Walker
1 Riverfront Plaza, Fl. 16
1037 Raymond Boulevard
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FOURTH CIRCUIT
Willis P. Whitchard
501 Eastowne Drive #130
Chapel Hill, NC 27514

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
1101 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
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233 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
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Suite 1600
211 N. Broadway
Saint Louis, MO 63102-2769

NINTH CIRCUIT
Edith P. Matichai
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TENTH CIRCUIT
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ELEVENTH CIRCUIT
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STAFF COUNSEL
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202-662-1761
mize.cardman@americanbar.org

AMERICAN BAR ASSOCIATION

Please respond to:

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Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

VIA EMAIL AND FIRST-CLASS MAIL

June 16, 2014

RECEIVED JUN 25 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: **Nomination of Mark A. Kearney to the United States
Court for the Eastern District of Pennsylvania**

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Mark A. Kearney who has been nominated for a position on the United States District Court for the Eastern District of Pennsylvania. The Committee is of the opinion that Mr. Kearney is Unanimously Qualified for this position.

A copy of this letter has been provided to Mr. Kearney.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Mark A. Kearney, Esq. (via email)
The Honorable W. Neil Eggleston (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

1221

June 16, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on June 16, 2014.



AMERICAN BAR ASSOCIATION

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-6299

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STAFF COUNSEL
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nise.cardman@americanbar.org

Please respond to:

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Proskauer Rose LLP

11 Times Square
New York, New York 10036

Tel: (212) 969-3065

Fax: (212) 969-2900

E-Mail: bplevan@proskauer.com**VIA EMAIL AND FIRST-CLASS MAIL**

June 16, 2014

RECEIVED JUN 25 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Joseph F. Leeson, Jr. to the United States
Court for the Eastern District of Pennsylvania

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Joseph F. Leeson, Jr., who has been nominated for a position on the United States District Court for the Eastern District of Pennsylvania. A substantial majority of the Committee is of the opinion that Mr. Leeson is Qualified for this position and a minority of the Committee is of the opinion that Mr. Leeson is Not Qualified for this position.

A copy of this letter has been provided to Mr. Leeson.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Joseph F. Leeson, Jr., Esq. (via email)
The Honorable W. Neil Eggleston (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

1223

June 16, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on June 16, 2014.



AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary

Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10038-8299

FIRST CIRCUIT
Paul E. Summit
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FEDERAL CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22068-1743

STAFF COUNSEL
Denise A. Cardman
202-662-1761
mise.cardman@americanbar.org

Please respond to:

Bettina B. Plevan, Esq.
Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

VIA EMAIL AND FIRST-CLASS MAIL

June 16, 2014

RECEIVED JUN 25 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Gerald J. Pappert to the United States
Court for the Eastern District of Pennsylvania

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Gerald J. Pappert who has been nominated for a position on the United States District Court for the Eastern District of Pennsylvania. The Committee is of the opinion that Mr. Pappert is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Mr. Pappert.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Gerald J. Pappert, Esq. (via email)
The Honorable W. Neil Eggleston (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

1225

June 16, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on June 16, 2014.

1226

WILLIAM H. SORRELL
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SUSANNE R. YOUNG
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June 19, 2014

RECEIVED JUN 27 2014

Hon. Patrick Leahy
Russell Senate Office Building
Washington, DC 20510

Re: Gerald J. Pappert

Dear Senator Leahy:

I write to express my strong support for President Obama's decision to nominate Jerry Pappert for the United States District Court for the Eastern District of Pennsylvania. I first met Jerry in the late 90s, when he was serving as Chief Deputy to then Attorney General and now 3rd Circuit Judge Mike Fisher. The relationship continued during the time when Jerry succeeded Mike as Pennsylvania Attorney General and has continued since his departure for private practice.

Jerry was and remains respected and liked by AGs of all political stripes. He has the brains, temperament, broad experience and deep commitment to important ethical standards to be a valuable addition to the federal judiciary. Jerry is currently a commercial litigator in the Cozen O'Connor law firm. He has continued in public service as Chair of Pennsylvania's Banking and Securities Commission.

Like yours truly, he has a degree from Notre Dame – not St. Michael's, but close!

Please feel free to reach out to me if you would like to discuss Jerry's qualifications in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill Sorrell', written over the word 'Sincerely,'.

William H. Sorrell



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

July 22, 2014

Hon. Sheldon Whitehouse
170 Westminister Street
Providence, Rhode Island 02903

Re: Nomination of Gerald Pappert to the United States District Court for the
Eastern District of Pennsylvania

Dear Senator Whitehouse:

I recently learned that the nomination of Gerald J. Pappert to the United States District Court for the Eastern District of Pennsylvania has been forwarded to the United States Senate for confirmation. I have never before commented upon a federal judicial nomination, but because of my relationship with Jerry Pappert, depart from that practice.

In May, 1999, four months into my tenure as Deputy Attorney General, I attended my first "Chief Deputies Conference" in San Antonio, Texas. I retrospect, that point of my career was truly a blur; every day was filled with new experiences and new challenges. I barely knew what the "National Association of Attorneys General" was, and did not appreciate the value of the relationships that could be developed through that organization.

The Chief Deputy Attorney General of Pennsylvania, Jerry Pappert, ran that conference. I was in awe of the management experience and insights that he had to offer, and perhaps more importantly, of how willing he was to share them with a new Deputy such as myself.

I came to know Jerry well after that conference. I valued his judgment and insight on a myriad of issues, and in particular on those which impacted both of our states. When Attorney General Mike Fisher was appointed to the United States Court of Appeals for the Third Circuit, Jerry was promoted to become Pennsylvania's Attorney General, filling out the remaining three years of his term. Like most of my colleagues, I was enormously proud of Jerry in his new role. Jerry continued to serve as a valuable resource to me and other Chief Deputies around the country, and provided unique insights into the topic of the relationship between the Attorney General and Chief Deputy.

Although my relationship with Jerry began as a professional one, I have come to consider him a friend. I know of few persons as passionate about the Boston Red Sox as Jerry, and have had the pleasure of attending several games with him. I have also watched helplessly as Jerry and wife suffered through the terminal illness of their son George, who was stricken with a malignant brain tumor. Watching the grace and the dignity of Jerry during this most difficult of circumstances only further enhanced my great respect for him.

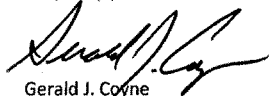
Hon. Sheldon Whitehouse
July 22, 2014
Page Two

Having watched him interact with numerous people over years, including Attorneys General, NAAG support staff, private counsel, and others, I can state with conviction that I have met few, if any, others with the judicial temperament that Jerry has consistently demonstrated. He listens; he cares what people say, and ensures that they understand how important their point of view is to him. He is respectful of the law, and works hard to ensure that he considers the legal basis of his decisions. Perhaps most importantly, he has shown, time and again, the willingness and the ability to make a difficult decision.

Jerry Pappert will be an outstanding United States District Court Judge. I am extraordinarily proud to call him a friend, and to endorse his confirmation in the strongest possible terms.

Thank you very much for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gerald J. Coyne", written in a cursive style.

Gerald J. Coyne
Deputy Attorney General

**NOMINATIONS OF HON. MADELINE COX
ARLEO, NOMINEE TO BE DISTRICT JUDGE
FOR THE DISTRICT OF NEW JERSEY;
VICTOR ALLEN BOLDEN, NOMINEE TO BE
DISTRICT JUDGE FOR THE DISTRICT OF
CONNECTICUT; DAVID J. HALE, NOMINEE
TO BE DISTRICT JUDGE FOR THE WESTERN
DISTRICT OF KENTUCKY; AND GREGORY N.
STIVERS, NOMINEE TO BE DISTRICT JUDGE
FOR THE WESTERN DISTRICT OF KEN-
TUCKY**

TUESDAY, JULY 29, 2014

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:41 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Richard Blumenthal, presiding.

Present: Senators Blumenthal, Coons, and Grassley.

Senator BLUMENTHAL. We will now call the Judiciary Committee to order. We are today considering four nominees to district courts in the States of New Jersey, Connecticut, and Kentucky. And in consideration of the Senators' very busy schedules, I would like to begin by inviting Senator Paul of Kentucky and Senator Murphy of Connecticut to make introductory remarks about the nominees from their respective States.

Senator Paul.

**PRESENTATION OF DAVID J. HALE, NOMINEE TO BE DISTRICT
JUDGE FOR THE WESTERN DISTRICT OF KENTUCKY, AND
GREGORY N. STIVERS, NOMINEE TO BE DISTRICT JUDGE
FOR THE WESTERN DISTRICT OF KENTUCKY, BY HON. RAND
PAUL, A U.S. SENATOR FROM THE STATE OF KENTUCKY**

Senator PAUL. Thank you, Senator Coons, and thank you, Ranking Member Senator Grassley. Both Senator McConnell and I support these nominees, Greg Stivers and David Hale, to become district judges from Western Kentucky. We believe both of these gentlemen are highly regarded and would make great additions to the district court.

I have known Greg Stivers for over 20 years. I have known him as a friend, a neighbor, and a father. He is respected in the community. He has wisdom, a sense of justice, and a fidelity to the rule of law.

Greg Stivers earned his J.D. from the University of Kentucky in 1985, has practiced law in my home town of Bowling Green for many years, primarily focusing on employment, business, and real estate. Greg has served as president of the Big Brothers Big Sisters of South Central Kentucky. He is a founding board member of Western Kentucky Research Foundation and has served as president of Hilltopper Athletic Foundation. I think Greg Stivers will make a great Federal judge.

David Hale is another proud graduate of the University of Kentucky College of Law. He was confirmed as a U.S. Attorney for the Western District of Kentucky in 2010. Formerly, David served as Assistant U.S. Attorney. During that time he prosecuted a vast array of criminal cases and represented the Government in numerous cases of civil litigation involving fraud against the Government. Previously, David served on the board for the Urban League of Louisville and Kentucky Educational TV, the State's public television network. In my interactions with him as a Senator, I have been particularly pleased by his responsiveness and respect for Congress. I think David will make a great Federal judge as well.

Both of these nominees understand the role of a judge and will approach the job with a sense of justice expected by those who enter the courts. Their nominations are an example of all sides coming together in a bipartisan way for the good of the Commonwealth and the country. I look forward to their confirmation as a district judge and to your consideration of their confirmation.

Thank you.

Senator BLUMENTHAL. Thank you very much, Senator Paul.

And I do not know yet whether Senator McConnell—

Senator GRASSLEY. Could I speak to that point?

Senator BLUMENTHAL. Certainly. Senator Grassley.

Senator GRASSLEY. Senator McConnell was planning to be here this morning to introduce and show his support for the nominees from his State of Kentucky, as Senator Rand Paul has now. But because we got started late and his presence was needed on the Senate floor, he could not be here in person. So he was disappointed he could not be here and sent along a statement for the record that I would like to have inserted.

Senator BLUMENTHAL. Without objection.

[The prepared statement of Senator McConnell appears as a submission for the record.]

Senator BLUMENTHAL. Thank you, Senator Paul.

Senator Murphy, would you like to introduce the nominee from the State of Connecticut?

PRESENTATION OF VICTOR ALLEN BOLDEN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT, BY HON. CHRISTOPHER MURPHY, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator MURPHY. Thank you very much, Mr. Chairman, Ranking Member. Thank you for having me here today. It is my honor to

introduce my friend, Victor Bolden, before the Committee. Mr. Bolden is one of Connecticut's most experienced and well-qualified lawyers. He has clearly demonstrated the intellect, the integrity, and the life experience that will make him a capable Federal court judge.

It is also terrific to see so many of his family members here with us today. I know he will introduce them to you.

Victor was born in New York City in 1965 and received his bachelor's degree from Columbia University, went on to receive his law degree from Harvard. He has demonstrated a unique, lifelong commitment to public service, serving as an attorney for two national civil rights organizations, and as a corporation counsel for the city of New Haven. Along the way he has worked on some of the most significant civil rights cases of our time with distinction. And in addition, he has worked pro bono for a number of very important organizations in Connecticut, among them the Connecticut Food Bank and the Connecticut Veterans Legal Center.

His experience and success as an advocate has been wide-ranging. One of his colleagues wrote in support of his nomination to the bench, "I am struck by the depth and breadth of Victor's experience as a trial and appellate lawyer in private practice, as a teacher, writer, and public speaker, as counsel to the NAACP and ACLU, and as corporation counsel to the State of New Haven. In each of these roles, Victor has impressed not only his colleagues but even those who have argued against him."

He previously worked at the NAACP Legal Defense and Educational Fund, serving as their general counsel. He then worked at the law firm—or before that worked at the law firm of Wiggin and Dana, one of our biggest firms in New Haven, Connecticut. He began his career at the American Civil Liberties Union Foundation.

Most recently he has served New Haven as its corporation counsel, a position that he has held since 2009. It is there that he has gained broad bipartisan respect throughout the city, region, and State. It does not hurt that Victor is known for bringing cake to the staffers at City Hall every Friday afternoon. But he has gotten a reputation as a go-to guy in New Haven, especially from many of the young lawyers that he mentors.

In short, Victor is a man who has consistently used his talents and passion to give back to the community around him. His entire life experience has prepared him to be a compassionate and impartial judge, and I am confident that Victor Bolden will be an outstanding addition to the Federal bench.

Thank you very much, Mr. Chairman, for allowing me to introduce him today.

Senator BLUMENTHAL. Thank you both very much. Thank you for being here.

For those who may not be familiar with our process, our two Senators who are here to introduce nominees from their States have other obligations, and they will probably leave to attend to Committee hearings and other business. Thank you so much for being here this morning.

We will have one more Senator to introduce a nominee from his State, and I would just like to welcome everyone. And, Senator Menendez, thank you for joining us.

**PRESENTATION OF MADELINE COX ARLEO, NOMINEE TO BE
DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, BY
HON. ROBERT MENENDEZ, A U.S. SENATOR FROM THE
STATE OF NEW JERSEY**

Senator MENENDEZ. Mr. Chairman, thank you very much for the opportunity, and to you and to the distinguished Ranking Member and to all the Members of the Committee, it is my pleasure and honor to come before the Committee today to introduce Madeline Cox Arleo, nominated to the U.S. District Court for New Jersey. She is a New Jerseyan who in her life and her career has embodied the qualities of respect for justice, the rule of law that we look for in all our judicial nominees.

In nominating her, the President recognized her "unwavering commitment to justice and integrity and an impressive record of public service." And the American Bar Association rated her unanimously well qualified for the nomination, and I agree, as all who have practiced before her or served with her and known her would agree with that unanimously well qualified.

I applaud the President's nomination of Judge Arleo. She is sharp, experienced, committed to justice, has the appropriate respect and deference to precedent, has the right type of judicial temperament that we want to see in district court judges, all of which are essential qualities of any great judge.

She has demonstrated an impressive ability to manage complex legal cases throughout the course of her career and is clearly an incredibly great choice to serve as New Jersey's district court judge.

I will look forward to her swift confirmation before the Committee and the full Senate and will work with Members of the Committee to be sure we can expedite the process as quickly as possible.

Very briefly, prior to her appointment to the bench, Judge Arleo was a partner at Tompkins, McGuire, Wachenfeld and Barry, where she practiced and focused on civil litigation in State and Federal courts. She began her legal career as a law clerk to Justice Marie Garibaldi of the New Jersey Supreme Court. She received her J.D. summa cum laude from Seton Hall, her M.A. from Rutgers University, and her B.A. from Rutgers College. And as distinguished as a resume that may be, it does not paint the full portrait of her as a judge, as a respected and contributing member of the New Jersey community, or as a public servant.

For the last year, she has run the Renew Program in our State to help ex-offenders who graduate from a program that requires them to attend 52 court sessions to become eligible to have their supervisory release reduced by a year. Judge Arleo oversees the program that involves intensive monitoring and the cooperation of attorneys and probation officers who select ex-offenders still under court supervision. The fact is the program works. It reduces recidivism and helps qualify ex-inmates to reintegrate into society and build a crime-free life.

Clearly, Mr. Chairman, this is not someone who is just handing down decisions from the bench. She is involved in the judicial process from the beginning to the end.

She has spent 14 years as a Federal magistrate judge in New Jersey after a decade of very involved State and Federal litigation.

She is accomplished, successful, and I think that the Committee, upon your review, will agree with me and Senator Booker, who also supports this nominee, that she is eminently well qualified and the type of judge we want to see on the Federal courts.

And with that, Mr. Chairman, I am happy to answer any questions. If not, I have a hearing on Iran that I will excuse myself to.

Senator BLUMENTHAL. You are excused. Thank you so much for being here. We really appreciate it. Thank you. And I know it means a lot to the nominees and their families, particularly to Ms. Arleo.

If I could ask the nominees to please come forward and take your seats at the witness table. Let me just make a couple of introductory remarks, and then turn to Senator Grassley, if he has any.

I cannot exaggerate the importance of the job that you have been nominated to fill. As a practicing attorney for many years and United States Attorney and the Attorney General of our State, I was in Federal court frequently, intensively, actively, and I know firsthand that you will be the voice and face of justice for countless people. There is always the right of appeal. People can always go to a higher court. But for many litigants, the result in your court will be the final outcome in their cases. When they seek justice, they will be turning to you to vindicate their rights. And that responsibility is truly awesome.

Our responsibility in making sure that we confirm people who are truly qualified is profoundly significant, one of the most significant, in my view, that we have in the Senate of the United States.

And so, first of all, let me thank you for your willingness to serve. People often do not appreciate the amount of work, the sacrifice that is required for this service on your part and on your family's part. So I thank your families as well.

I am hoping that we can move expeditiously on these nominees. We have increasing cooperation across the aisle. I want to thank my colleague Senator Grassley for his cooperation. And I want to say a word about Victor Bolden because he comes from my State. I have great respect for the three other nominees as well, but I know Victor Bolden and have strongly supported and endorsed his nomination, not only because his previous service as corporation counsel and in his law firm and community activities has impressed me, but also he has the skill, temperament, and intellectual acumen for this job.

My colleague Senator Murphy described very well his background, his qualifications in terms of his previous jobs, but he has really dedicated his legal career to public service, and he has fought and worked for the citizens of New Haven as well as Connecticut through his work to fulfill the promise of equal education in our Nation's schools as well as affirmative action and school desegregation cases. He is a dedicated and accomplished civil rights litigator, a compassionate, respected attorney. He has a strong commitment to the rule of law, and he has a keen and very impressive intellect.

One of the things that has most impressed me about Mr. Bolden, and also about the other nominees, is the amount of support that he has received in Connecticut. We have a legal community, as you do in your States, I am sure, that knows each other and works with

each other. And in Connecticut, Mr. Bolden has the highest respect in his profession. He is well liked and extraordinarily well respected, and I believe he will make an excellent judge. And I am pleased to welcome him as well as all of you here today. So thank you so much for participating in this hearing and for being willing to serve.

And then I am going to ask you to be sworn. As is the custom of our Committee, all of our nominees are sworn. If you would please rise and raise your right hand. Do you affirm that your testimony today will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge ARLEO. I do.

Mr. BOLDEN. I do.

Mr. HALE. I do.

Mr. STIVERS. I do.

Senator BLUMENTHAL. Thank you.

I am going to introduce the other nominees as well, even though some of you have already received introductions from Senators.

Ms. Arleo has served as a United States magistrate judge for the District of New Jersey for the past 14 years. She is nominated to serve as United States District Judge for the District of New Jersey, as you know. She was previously a partner at Tompkins, McGuire, Wachenfeld and Barry, and Barry and McMoran. She also served as a law clerk for Judge Marie Garibaldi on the New Jersey Supreme Court, and she received her bachelor's and master's degree from Rutgers University, her law degree summa cum laude from Seton Hall University School of Law.

Mr. Hale served as United States Attorney for the Western District of Kentucky since 2010, and he was previously an Assistant U.S. Attorney for that same district for 4 years ending in 1999. He is nominated to serve again as U.S. District Judge for the Western District of Kentucky, and he previously practiced as a partner and counsel at Reed, Weitekamp, Schell and Vice for 11 years. Mr. Hale received his law degree from the University of Kentucky Law School in 1992 and his bachelor's degree from Vanderbilt University in 1989.

Mr. Stivers has spent his entire legal career at Kerrick, Bachert and Stivers. He began his career as an associate, became partner in 1990, and is now nominated to serve as U.S. District Judge also for the Western District of Kentucky. He received his law degree from the University of Kentucky in 1985 and his bachelor's degree from Eastern Kentucky University.

Thank you all, and I would invite each of you to make a brief opening statement. You can introduce the family members who are with you today and make whatever other remarks you would like to do. Thank you. Go ahead, Ms. Arleo.

**STATEMENT OF HON. MADELINE COX ARLEO, NOMINEE
TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY**

Judge ARLEO. Thank you, Senator, and thank you for convening today's hearing. A special thank you to Senator Menendez for his kind remarks, and thank you to President Obama for the honor of this nomination.

I have with me a number of family members and friends from New Jersey: my husband, Frank Arleo, who, like me, is a New Jersey lawyer; my daughter, Alexandra, who is 16 and will be a junior at Mount St. Dominic Academy in Caldwell, New Jersey; my son, Peter, who is 14 and will be a freshman at Seton Hall Prep in New Jersey.

I also have with me my cousin, Drew Niekrasz, who I had the privilege of swearing in as chief of police of Bayonne, New Jersey, just last week; my aunt, Alice Niekrasz; my uncle, Frank Niekrasz, who served this country proudly in World War II in the United States Navy, and tomorrow is his 94th birthday, and I am so grateful that he could be with me today.

Also with me is a number of friends, my staff, my excellent staff; my law clerk—Amy Anderson, my deputy clerk; and Amanda Lauffer, my law clerk; as well as my friend Tom Scrivo, one of my closest colleagues from law school.

I saved the best for last: my mother, Elizabeth Cox, who has supported me throughout my life. And I would like to just acknowledge the presence of my father, who passed away some time ago, but I know he is here with me in spirit.

I think that is everyone, and I would also like to thank all the members of our Federal family and friends who are watching at home on the Webcast.

Thank you.

[The biographical information of Judge Arleo appears as a submission for the record.]

Senator BLUMENTHAL. Thank you.

Mr. Bolden.

**STATEMENT OF VICTOR ALLEN BOLDEN, NOMINEE TO BE
DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT**

Mr. BOLDEN. Thank you, Mr. Chair, and thank you, Senator Blumenthal, for your very kind remarks on my behalf.

Senator BLUMENTHAL. I think your microphone is off. There you go.

Mr. BOLDEN. Thank you, Mr. Chair, and thank you, Senator Blumenthal, for your kind remarks and support of my nomination as well as Senator Murphy. I want to also thank the President for nominating me.

I do have the pleasure and honor to have my family here. First and foremost, my wonderful son, Caleb, is here, who is 11 years old. Caleb, to actually be here, missed an opportunity to be in the Ranking Member's great State of Iowa to compete in an athletic event to be here in support of me, and I appreciate that very much.

My parents, the Reverend Isaac and Mary Bolden, are here today. My siblings are here: my brother, Isaac, III, my sister, Alecia; my other sister, Veronica. My sister, Alecia, and her three children are here as well: William, Aviana and Karina. And my sister, Veronica, is here with her husband, Charlie, and their two daughters, Ella and Alana.

Unfortunately, my sister Alecia Goode's husband, William, could not be here. He has been home recovering from an illness.

I also have my uncle, Willie Harris, my mother's brother, who has also been a long supporter and helped throughout the course of my life; and his son, Thomas Hardin.

I am very, very grateful to be here, and I appreciate the opportunity this Committee has provided me.

[The biographical information of Mr. Bolden appears as a submission for the record.]

Senator BLUMENTHAL. Thank you very much.

Mr. Hale.

STATEMENT OF DAVID J. HALE, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF KENTUCKY

Mr. HALE. Thank you, Mr. Chairman and Ranking Member Grassley. I want to say a thank you to the Committee for having us here today. I look forward to the opportunity to be here and to answer your questions.

I want to begin by thanking Senators McConnell and Paul for their support and Senator Paul's kind words this morning.

Also, I would like to thank the President for the nomination and for the opportunity to serve as United States Attorney for the past 4 years.

I have with me my family. I will begin with my wife of 25 years, Ann. She is a registered nurse in Louisville. And our kids are with us here today. My daughter, Caroline, is 19 and will be beginning her sophomore year of college this fall. Our son, John David, is 17 and in a couple of weeks he will start his senior year of high school.

My parents are with us as well. My mother, Brenda, is a retired registered nurse in Louisville, and my father, David, is a banker in Louisville.

Again, thank you, Mr. Chairman.

[The biographical information of Mr. Hale appears as a submission for the record.]

Senator BLUMENTHAL. Thanks, Mr. Hale.

Mr. Stivers.

STATEMENT OF GREGORY N. STIVERS, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF KENTUCKY

Mr. STIVERS. Thank you, Chairman Blumenthal, Ranking Member Senator Grassley. I would like to also thank the entire Judiciary Committee for their diligent work in reviewing my submissions, and I would like to express my sincere thanks to Senator McConnell and Senator Paul for their recommendation and for their support throughout this process. And certainly I would like to thank President Obama for his confidence in my qualifications to nominate me to this important job.

I have got some family and friends here that I would like to introduce as well, first, my wife and three daughters, whose love and respect are my primary motivations in life.

My wife, Alicia, whose father was a county attorney in Bracken County in northern Kentucky for over 30 years, and whose grandfather was a Commonwealth's attorney who argued a case in front of the U.S. Supreme Court.

My daughters: Elizabeth, who is in her final year of pharmacy school at the University of Kentucky; and my daughter, Laura, who

is about to start her final semester of accounting at Western Kentucky University; and my youngest daughter, Lillie, who just graduated from high school and is getting ready to enroll—start classes at the University of Kentucky in the fall. I think that Lillie may actually be the fourth generation of attorneys in our family.

Also with me today is my sister, Lynne Stivers Smith, who is down from Lancaster, Pennsylvania; and my two dear friends, Rob Porter and Bruce Fane, who have come up from Bowling Green, Kentucky, for the hearing today.

I would also like to recognize, if I could, some folks who could not be here today but are watching the Webcast: my parents, Ken and Susie Stivers, who are watching in Elizabethtown, Kentucky, and all my friends and colleagues at Kerrick, Bachert and Stivers, who are watching in the upstairs conference room of our Bowling Green office.

Finally, I would like to recognize three family members who have been an important influence on me in my legal career: first, my grandmother, Lillian Parish, who was a court reporter in the Hardin County court when I was growing up, and her stories of courtroom drama and humor are still among my earliest memories. And I know Lillie is here in spirit today.

I also would like to thank my two uncles, Tom Cooper and Bill Cooper. Tom is an accomplished trial attorney in Lexington, Kentucky, with the firm of Landrum and Shouse, and Bill is a former Hardin circuit court judge who served 10 years as a Justice on the Kentucky Supreme Court. I would like to thank Tom and Bill for acting as role models and mentors to me over the years.

Thank you.

[The biographical information of Mr. Stivers appears as a submission for the record.]

Senator BLUMENTHAL. Thank you all for your opening remarks. I know that your families whom you have introduced are very proud of you today.

I am going to put in the record a statement from Senator Rockefeller in support of Mr. Hale's nomination. Evidently, he worked with your dad when your dad was banking commissioner and he was Governor of West Virginia. So that will go in the record, without objection.

[The prepared statement of Senator Rockefeller appears as a submission for the record.]

Senator BLUMENTHAL. And I am going to turn to Ranking Member Senator Grassley because he has another commitment. I will have my questions after his. Senator Grassley.

Senator GRASSLEY. Thank you for your courtesy, and for all the Members, we do not have a lot of time to ask each of you questions, so on the Republican side, you will probably get some questions in writing that we would appreciate your answering before your nomination comes before the Committee.

I enjoy asking nominees about something they wrote a long time ago to see if they share the same view now, and Mr. Bolden had the prestige of having a Harvard law article written. That is pretty good that you could do that. You wrote something called, "Judge not that you may be not judged." In that article, which reads like a script for a play, you wrote imaginary dialogue between certain

deceased Supreme Court Justices and God, and the conversations do not turn out too well for the Justices.

[Laughter.]

Senator GRASSLEY. As I am sure you remember, you had God cross-examine the Justices about some of their opinions. After God finds fault with them, he condemns them to justice, as you put it, "to spend eternity in Hell."

[Laughter.]

Senator GRASSLEY. Now, as I read your article, it quickly became clear that the God character was actually a vehicle for your own views. I hope I have interpreted that right. Looking back, I am sure you intended for part of the article to be amusing and to read like a parody. But you do get serious at the end.

What I would discuss specifically is what you do at the end of the article. That is where you describe four principles which you argue define proper judicial decisionmaking. You write that you intended those principles to be a "visionary statement of how judges ought to look at themselves and how they consider deciding cases." I think that is important because we usually do not encounter nominees who have previously expressed their views on judging in such a concrete way. So I would ask you questions about those principles.

Your first principle is, "If the decision affects society's dispossessed and oppressed, the decision must be made in a way that eases their burden and does not add to their woes." Would you adhere to that if you are confirmed?

Mr. BOLDEN. Senator, thank you very much for the question and the opportunity to address this issue. Let me say that I can assure you that, if I have the opportunity to be confirmed and serve as a judge, that my decisionmaking will be based solely on the applicable law and the facts and evidence before me, not based on my musings in fictional form written when I was a law student. It was before I had practiced law and had the various experiences I have today that I think make me qualified to be a judge.

Senator GRASSLEY. It could be that the next three points you might give the same answer, but let me ask anyway.

The second principle, that "the judge must be considered"—I will start over again. "The judge must consider how she or he would want to be treated if they were in the same circumstances as the person they were about to affect with their decision."

Do you still think that way?

Mr. BOLDEN. My answer would be the same, that, you know, if confirmed to be a judge, my decisions would be based on the applicable law and the facts, not based on the musings I had almost a quarter century ago.

Senator GRASSLEY. Okay. Let me read the third principle. "A judge has to be held accountable when their talent is not used to restructure a legal system gone awry if that is what needs to be done." I just would like to have you explain that statement.

Mr. BOLDEN. I am sorry?

Senator GRASSLEY. Should I read it again?

Mr. BOLDEN. Yes, please. Would you?

Senator GRASSLEY. “A judge has to be held accountable when their talent is not used to restructure a legal system gone awry if that is what needs to be done.”

Mr. BOLDEN. Again, Senator, I appreciate the opportunity to sort of clarify that what I would—if confirmed, my approach to the law, my approach to decisions before me would be based on the law and the facts, not based on thoughts I had when I was a law student nearly a quarter century ago.

Senator GRASSLEY. Okay. And the last principle: “Judges must be mindful of the fruits or consequences of their decisions.”

Mr. BOLDEN. Senator, I think the answer would be the same, that my approach as a judge, if confirmed, would be to apply the binding precedent to the facts in the case as they come before me, not based on musings I had as a law student.

Senator GRASSLEY. Then I would have one question for Mr. Stivers, and the other two people I will submit questions for answers in writing.

Mr. Stivers, in 2011, you wrote an amicus brief on behalf of some of Kentucky educational institutions and nonprofit organizations for a case before Kentucky’s something challenging gun ownership rights. In the brief, you argued that State colleges could ban gun possession by college employees on campus. Part of your argument was that college campuses were “sensitive places that could be regulated to ban guns.” The State high court held that the Second Amendment allowed the gun possession so long as the owner had a valid concealed carry permit and properly secured the gun in his home.

So my single question: In light of that Kentucky case and the Supreme Court’s recent Second Amendment cases *Heller* and *McDonald*, could you discuss how you understand the scope of the Second Amendment with respect to possession of firearms?

Mr. STIVERS. Yes, sir. Thank you, Senator. Of course, the arguments in my brief on behalf of Western Kentucky University were as an advocate on behalf of my client and did not reflect my personal views. If confirmed, any case I dealt with with regard to the Second Amendment I would follow *Heller* and *McDonald*.

Senator GRASSLEY. Thank you.

[The questions of Ranking Member Grassley appear as submissions for the record.]

Senator GRASSLEY. Thank you, Mr. Chairman, for your courtesy. Thank you.

Senator BLUMENTHAL. Thanks very much, Senator Grassley.

Let me ask a question of each of you, and it is a very general question, but I think it may elicit views and information about your qualifications that are of value to our Committee.

Let me ask each of you what you think in your experience is the most important qualification or preparation for becoming a United States district court judge, and, likewise, what you wish you might have done that would have been even a better preparation. And if you are confused by the question, you should not hesitate to tell me. But let me begin going left to right, if I may—or my left to right, your right to left.

Judge ARLEO. Thank you, Senator. I have had the privilege of serving as a magistrate judge now for almost 14 years, and I have

learned many things. The most important is that respect for the rule of law. Judges must be fair and impartial at all times, carefully scrutinizing the record, the evidence, and applying the settled law of the circuit, in my case the Third Circuit, and the Supreme Court. That to me are the most important qualities of a judge, and if I have the honor of being confirmed, I will continue to work toward them.

If I had to think of one thing I could change about my legal career, that I would add that would perhaps make me a stronger candidate, it would have been to have spent time at a prosecutor's office or perhaps a public defender's office, perhaps a U.S. Attorney's office. And although I do not have that experience, I have relied on advice from colleagues and taken the opportunity to learn the law as best I can on the criminal side. And that is how I—that would be the one thing I would change if I could.

Thank you.

Senator BLUMENTHAL. Thank you.

Mr. Bolden.

Mr. BOLDEN. Thank you, Senator. I think the most important qualities of a judge is that ability to listen impartially and fairly to the cases that come before you and to apply the law likewise, to apply the binding precedent, and in such a way that it shows a respect for the rule of law so that either side the party before you has confidence that justice has been served, whether or not they agree with the ruling or not. And I think the concept of the rule of law is so vital to our society and making sure that people have confidence that the law works for everyone and works for everyone in the same way I think is critical in terms of being a judge. And I am fortunate to have had a variety of experiences to be on different sides of a variety of issues, having represented employers and employees, having been on the other side suing a municipality and representing a municipality, that you begin to have a real respect for the various roles that people play in life, public safety officers and, you know, the day-to-day work that people go through. And I think that that experience in that respect I think hopefully will bode me well if I am fortunate enough to be confirmed.

I think there are always more experiences I would wish to have had, and perhaps more in the criminal law area might have been something that would actually—would also serve me well on the bench. But I am fortunate for the experiences that I have had, and I believe they will serve me well.

Senator BLUMENTHAL. And an experience that you wish you had had that you did not?

Mr. BOLDEN. Yes, I was going to say, more in the area of criminal law, I would say.

Senator BLUMENTHAL. Thank you.

Mr. Hale.

Mr. HALE. Thank you, Mr. Chairman. My answer will sound similar. I think that the commitment to impartially apply precedent and law is critically important. I think treating all litigants fairly, allowing a full hearing, is also critically important to a judge's service.

I have been very fortunate to have had the career experiences that I have had, and in particular these last 4 years to serve as

United States Attorney. And that has given me the ability to appreciate ever so more the role that our Federal courts play in our justice system.

And I suppose if I would look to one experience, I have no insight into the inner workings of the court because I was never a judicial clerk, and so I think that folks who are afforded that opportunity sometimes have a bit of an insider view. But, again, I am very fortunate to have served as an Assistant and as the U.S. Attorney.

Thank you.

Senator BLUMENTHAL. And is there an experience that you wish you had had? I am not sure whether you identified that?

Mr. HALE. Yes, sir. If—I would—I have not had the opportunity to be a judicial clerk, and so—

Senator BLUMENTHAL. The role of judicial clerk would be one you—

Mr. HALE. That would be one, yes.

Senator BLUMENTHAL. Thank you.

Mr. HALE. Thank you.

Senator BLUMENTHAL. Mr. Stivers.

Mr. STIVERS. Thank you, Senator Blumenthal. I would say my best qualification is the fact that I have tried cases in front of juries, in front of judges, for the last 29 years, and through each of those cases you learn a little bit from the way judges handle things, and so you take a little piece from every case, I think, as you stack up your experience.

The one area that I wish I could put down on my resume as being accurate would be having some criminal law, which I do not have. However, I do have an interest in the human drama that is inherent in all criminal cases. I also had an opportunity to serve as the foreman of the Federal grand jury in Bowling Green for a period of 18 months, which was very enlightening with regard to the indictment process and the law enforcement efforts in our area. Sadly, also I learned the extent of the methamphetamine problem in western Kentucky.

But with regard to the criminal law, I have read the Rules of Criminal Procedure. I have had an opportunity to sit in on several hearings and dockets over the last couple of months. And if confirmed, I would work hard to familiarize myself with the issues and the procedures of criminal cases and bring myself up to speed.

Senator BLUMENTHAL. Thank you. I have a few more questions, but I am going to defer to Senator Coons.

Senator COONS. Thank you, Senator Blumenthal. And my apologies. We have three different Committees conducting hearings at the same moment, so you may see some Senators come and go as they go to different hearings.

I just would be interested if each of you would briefly speak to the question of, as a judge, how would you ensure fair access to our legal system? How would you be certain that the doors of the courthouse are open to all who might seek justice?

Judge ARLEO. Thank you, Senator. I have had the privilege for the last 14 years of serving as a magistrate judge, and one of my most important functions is to make sure that every person who comes in the courtroom, whether they are pro se or they are a

multi-million-dollar corporation, has an opportunity to be heard, to be respected, to be listened to, and to be treated equally.

If I have the privilege of being confirmed to the United States district court, I will continue to treat all litigants fairly and make sure that they all have access to the Federal courts.

Senator COONS. Thank you, Your Honor.

Mr. Bolden.

Mr. BOLDEN. Yes, thank you very much for the question, Senator. I agree very much with Judge Arleo. The issue of respect and how you sort of send a message of how you treat people I think goes a long way to letting people know that the doors of justice are open and that you will be treated fairly once you come there.

Senator COONS. Thank you.

Mr. Hale.

Mr. HALE. Yes, sir, Senator, I would echo the comments of my fellow nominees, that it is incredibly important to treat all litigants fairly, large or small, and impartially, to ensure equal access and equal treatment.

Senator COONS. Mr. Stivers, any difference? Anything you would like—

Mr. SMITH. Honestly, just that I would echo the comments from my fellow nominees.

Senator COONS. Thank you.

Mr. Bolden, if I might, in the *Mount Holly* case, you appeared on a brief of several city governments which argued that local governments and constituents are benefited, not burdened, by the requirement to avoid unnecessarily discriminatory housing policies. Could you just elaborate on that for me?

Mr. BOLDEN. Yes, Senator, and thank you for the question. That was a brief that was done on behalf of the city of New Haven, my client, and was done in conjunction with other governmental entities. And I think that the fundamental point was that—and it actually goes back to your last question in terms of access to justice—is that when governments make sure that people feel they are being treated fairly and take steps to treat people fairly, that it is actually a beneficial thing for everyone.

Senator COONS. If I might, I think it is particularly important that a judicial candidate demonstrate the ability to be a balanced, fair-minded, consistent, yet open to changed facts or new ideas, and your representation in the *Ricci* firefighter discrimination case and in the *Heller* and *McDonald* Second Amendment cases have drawn some questions. And in my view, in each case you succeeded in representing your client's position zealously, and yet ultimately did not prevail, and then demonstrated an ability to respect and abide by the Court's ruling, which I think is an important piece of judicial temperament. In your case, in particular the fact that Frank Ricci, your lead adversary for 6 years in the *Ricci* case, submitted to this Committee a letter of support speaks volumes, I think, to your character and to your appropriateness for the bench.

If you will forgive me, I have another hearing. Thank you, Mr. Bolden. Thank you to all four of our nominees. And thank you to your families who are enduring this interesting nomination hearing.

Thank you, Senator Blumenthal, for chairing today. Thank you very much.

Senator BLUMENTHAL. Thank you, Senator Coons.

Let me just pursue the line of questioning that Senator Coons began about the *Ricci v. DeStefano* case, if I may, Mr. Bolden. As he pointed out, you represented the city of New Haven in that case when it declined to certify the results of a promotion exam because certification would have led to no African American firefighters working for the IT of New Haven to be promoted. You represented your client in trying to persuade the Supreme Court to rule that New Haven did not have to certify the exam results. The Supreme Court ruled the other way. You played an active role then in implementing the Supreme Court's decision, in fact, even going beyond what the Court demanded in an effort to comply with the spirit as well as the letter of the Court's ruling. And like other nominees here today, you have indicated your allegiance to the rule of law, which you really exemplified in implementing the Supreme Court's decision.

Did you find it hard to implement the Supreme Court's decision that rejected your position during the litigation? You were responsible, in effect, for implementing a U.S. Supreme Court decision from the highest court in the land that was in conflict with the position you had advocated. Was that a difficult work for you to do? And could you talk a little bit about how it indicates your allegiance and fidelity to the rule of law?

Mr. BOLDEN. Thank you, Senator, for the question. The answer is no, it was actually—it was very easy. The Supreme Court had spoken. The city had an obligation to comply with the law. And I honestly believe that if the Supreme Court has spoken and the law is very, very clear, it is important certainly for a government to send the message that it is going to comply with the law, to send the message that it respects the law, to send the message that what the Supreme Court has said is what the city is going to comply with. And we moved with as much dispatch as possible to make sure the Supreme Court order was complied with.

Within a week of when the district court order came back clarifying that the city needed to certify the exams and promote, we were able to promote. I mean, we actually got the order the Tuesday before Thanksgiving, and by the following Friday, everyone had been promoted.

And I am proud of that, and I am proud of that because it was important. And that day when we certified the exams that allowed them to be promoted, I said it was a great day for the rule of law, and I meant it. And it was important for the city to see that, because after you have a case that is contentious, because as a Nation we have a variety of views and we may be divided in a number of ways, but we should be united around the law and the importance of following the law.

Senator BLUMENTHAL. Thank you.

Mr. Stivers, you answered very well to Senator Grassley's question about the case that you did involving the Second Amendment issue that was raised in that litigation. And I am not asking you what your personal views are on the Second Amendment or related issues, but I have no doubt that in the course of 29 years of litiga-

tion you represented clients whose views may not have coincided with your own, either on politics or even on the merits of the case that you were litigating.

Could you talk a little bit about the duty of a lawyer as an advocate to represent the views of clients as zealously and vigorously as possible, whether or not you agree or disagree with them?

Mr. STIVERS. Yes, sir. I think the rule actually is similar whether you are an attorney representing a client as it would be for a judge, and that is to set aside your personal beliefs. Your duty as an attorney is to zealously represent your client and to study the law, study the facts, and make sure that you identify the best arguments that you can in favor of their position. It is not your position. It is their position. And that is what I have done, and in that one case that is what I was doing.

As a judge, by contrast, your function is to not act as an advocate, of course. You are supposed to be impartial. But the similarity is you are supposed to set aside your personal beliefs and to decide the case solely on the merits of the case presented to you.

Senator BLUMENTHAL. Thank you.

Mr. Hale, you have served as a prosecutor and as the chief Federal prosecutor of your district, and I know from having been a prosecutor that we could be as impassioned about those cases as any civil lawyer could be about the merits of his or her case. And I would like to ask you whether you would have difficulty dismissing a case if you found that the Government had failed to prove a critical element of the crime as required under the United States statutes?

Mr. HALE. Thank you, Mr. Chairman. No, I would follow the law, and if it were to prescribe a dismissal for failure to present adequate evidence, that is the ruling that I would give.

Senator BLUMENTHAL. I thank you all for answering my questions. If there is anything that any of you wish to add, I would be happy to hear from you. That exhausts our questions this morning.

We are going to have the record stay open for 10 days, and you will probably be getting—we will make it 1 week. That may save you some questions. The record will be open for 1 week, and you may receive, as Senator Grassley indicated, some written questions from my colleagues.

If any of you has anything more to say, I would be happy to hear from you.

[No response.]

Senator BLUMENTHAL. If not, the record will be open for 1 week. Senator Grassley indicated to me that he has some remarks that he wanted to be made part of the record, which I will do without objection.

Senator BLUMENTHAL. This hearing is adjourned.

[Whereupon, at 10:31 a.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Judicial Nominations”

Tuesday, July 29, 2014
Dirksen Senate Office Building, Room 226
9:30 a.m.

Madeline Cox Arleo, to be a United States District Judge for the District of New Jersey

Victor Allen Bolden, to be a United States District Judge for the District of Connecticut

David J. Hale, to be a United States District Judge for the Western District of Kentucky

Gregory N. Stivers, to be a United States District Judge for the Western District of Kentucky

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Madeline Cox Arleo (previously known as Madeline Elizabeth Cox)

2. **Position:** State the position for which you have been nominated.

United States District Judge for the District of New Jersey

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: United States District Court
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Residence: Caldwell, New Jersey 07006

4. **Birthplace:** State year and place of birth.

1963; Jersey City, New Jersey

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1986 – 1989, Seton Hall University School of Law; J.D. (*summa cum laude*), 1989
1985 – 1986, Rutgers University, The Eagleton Institute of Politics; M.A., 1986
1981 – 1985, Rutgers College; B.A., 1985

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2000 – present
 United States District Court
 District of New Jersey
 Martin Luther King Building & U.S. Courthouse
 50 Walnut Street
 Newark, New Jersey 07102
 United States Magistrate Judge

1998 – 2000
 Tompkins, McGuire, Wachenfeld & Barry, LLP
 Four Gateway Center
 Newark, New Jersey 07102
 Litigation Partner

1994 – 1998
 Barry & McMoran
 One Newark Center
 Newark, New Jersey 07102
 Associate (1994 – 1998)
 Litigation Partner (1998)

1990 – 1994, Summer 1988
 Clapp & Eisenberg
 One Newark Center
 Newark, New Jersey 07102
 Associate (1990 – 1994)
 Summer Associate (1988)

1990 – 1994
 Seton Hall University School of Law
 One Newark Center
 Newark, New Jersey 07102
 Instructor, Legal Writing and Research (part-time)

1989 – 1990
 New Jersey Supreme Court
 William J. Brennan Courthouse
 483 Newark Avenue
 Jersey City, New Jersey 07306
 Law Clerk to the Honorable Marie L. Garibaldi

Summer 1987
 Waters, McPherson, McNeil, P.C.
 300 Lighting Way
 Secaucus, New Jersey 07094
 Summer Associate

Summer 1986, Summer 1985
 McCarter & English, LLP
 Four Gateway Center
 Newark, New Jersey 07102
 Legal Secretary

February – May 1986
 Office of the Public Defender
 Division of Inmate Advocacy
 Richard Hughes Justice Complex
 25 Market Street
 Trenton, New Jersey 08611
 Graduate Intern

Other Affiliations

2013 – present
 Mount Saint Dominic Academy
 3 Ryerson Road
 Caldwell, New Jersey 07006
 Board of Trustees

2007 – present
 Montclair State University Paralegal Program
 Montclair State University
 1 Normal Avenue
 Montclair, New Jersey 07043
 Advisor

2005 – present
 The Association of the Federal Bar of New Jersey
 P.O. Box 172
 West Allenhurst, New Jersey 07711
 Advisor

2008 – present
 Notre Dame Church
 359 Central Avenue
 North Caldwell, New Jersey 07006
 Finance Council

2008 – 2012
 Saint Dominic Academy
 2572 Kennedy Boulevard
 Jersey City, New Jersey 07106

Board of Trustees (2008 – 2012)
Vice-Chair (2010 – 2012)
Acting Chairperson (2010)

1994 – 1997
District Ethics Committee, V-A, New Jersey Supreme Court
Office of Attorney Ethics
P.O. Box 963
Trenton, New Jersey 08625
Secretary

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Peter Rodino Society Distinguished Leadership Award, Seton Hall University School of Law (2011)

New Jersey Women Lawyers Association, Women's Initiative and Leaders in Law Platinum Award (2009)

C. Willard Heckel Inn of Court, Graduate (focusing on criminal trial practice) (1991 – 1993)

Seton Hall Law Review, Editor-in-Chief, Volume 19 (1988 – 1989) (full tuition scholarship)

Seton Hall Appellate Moot Court Competition, semi-finalist, Best Respondent's Brief (1988)

Andrew B. Crummy Memorial Scholarship (law school) (1987)

Hudson County Bar Foundation Scholarship (law school) (1986 – 1987)

Eagleton Institute of Politics, Full Graduate Fellowship (1985 – 1986)

Dean's List, Rutgers College (1983 – 1985)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees.

selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Foundation, New Jersey Chapter
Fellow (2007 – present)
The Association of the Federal Bar of New Jersey
Essex County Bar Association
New Jersey State Bar Association

10. Bar and Court Admission:

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New Jersey, 1989

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

District of New Jersey, 1989
United States Court of Appeals for the Third Circuit, 1994
Supreme Court of the United States, 2005

There have been no lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

American Bar Foundation, New Jersey Chapter (2007 – present)
Fellow

The Association of the Federal Bar of New Jersey (2005 – present)
Advisor

District Ethics Committee, V-A, New Jersey Supreme Court (1994 – 1997)
Secretary

Historical Society for the United States District Court, District of New Jersey
Advisor (1999 – present)

Montclair State University Paralegal Studies Program (2007 – present)
Advisor

Mount Saint Dominic Academy (2013 – present)
Board of Trustees

Notre Dame Church (1997 – present)
Finance Council (2008 – present)

Saint Dominic Academy
Board of Trustees (2008 – 2012)
Vice Chair (2010 – 2012)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Public Employees' Right To Free Speech in the Workplace Expanded, 19 Seton Hall L. Rev. 380 (1989). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and

a summary of its subject matter.

None of which I am aware.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

October 20, 2009: Meeting of the District of New Jersey Lawyers' Advisory Committee, regarding the amended Local Rule 301.1(c): "Compensation to Mediators." Minutes supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched my files and publicly available information in seeking to list below all speeches or talks I have delivered. There may, however, be others I have been unable to remember or identify. In particular, since becoming a judge, I have sought to participate in educational programs for attorneys and non-attorneys when asked.

April 17, 2014: Panelist, Prisoner Reentry Conference: "The Hudson County Model of Partnership and Collaboration." St. Peter's University, The Jersey City Employment and Training Program, Integrity House, New Jersey American Correctional Association, CFG Health Systems, The Hudson County Community Reintegration Program, New Jersey County Jail Wardens Association, Johnston Communications Voice and Data, GTL, Hudson County Department of Corrections, Jersey City, New Jersey. Video recordings available at: <http://goo.gl/Vc7mTn> and <http://goo.gl/ftpUch>.

March 25, 2014: Mistress of Ceremonies, "Women's Initiative and Leaders in the Law, Platinum Gala," New Jersey Women Lawyers Association, Cedar Grove, New Jersey. Remarks supplied.

March 20, 2014: Moderator, "Why Women Should Stay in the Game: A View From The Bench and Bar," The Association of the Federal Bar of New Jersey, 38th Annual United States District Court Judicial Conference, West Orange, New Jersey. Video supplied.

May 9, 2013: Panelist, Newark Court House Lunch Series: "The Do's and Don'ts in Federal Practice. An Insider's Guide From The Bench." District Court of New Jersey, Newark, New Jersey. This was a continuing legal education program in which judges and lawyers discussed federal practice in New Jersey. I have no notes, transcripts, or recordings. The event was sponsored by The Association of the Federal Bar of New Jersey, P.O. Box 172, West Allenhurst, New Jersey 07711.

March 20, 2013: Mistress of Ceremonies, "Women's Initiative and Leaders in the Law, Platinum Gala," New Jersey Women Lawyers Association, Cedar Grove, New Jersey. Remarks supplied.

March 14, 2013: Panelist, "The Work-Life Balance and Federal Court," The Association of the Federal Bar of New Jersey, 37th Annual United States District Court Judicial Conference, West Orange, New Jersey. Video supplied.

December 3, 2012: Remarks to newly admitted members of the Bar, Seton Hall University School of Law, Newark, New Jersey. Remarks supplied.

September 13, 2012: Panelist, Women's Bench Bar Conference, New Jersey Law Center, New Brunswick, New Jersey. I served on a panel with other federal and state court judges in which we discussed issues facing women in the legal profession. I have no notes, transcripts, or recordings. The event was sponsored by the Women In The Profession Section of the New Jersey State Bar Association, The New Jersey Law Center, One Constitution Square, New Brunswick, NJ 08901-1520.

May 23, 2012: Panelist, Newark Court House Lunch Series: "The Do's and Don'ts in Federal Court: An Insider's Guide From The Bench." District Court of New Jersey, Newark, New Jersey. This was a continuing legal education program in which judges and lawyers discussed federal practice in New Jersey. I have no notes, transcripts, or recordings. The event was sponsored by The Association of the Federal Bar of New Jersey, P.O. Box 172, West Allenhurst, New Jersey 07711.

March 22, 2012: Panelist, "Sealing Orders, Confidentiality, Public Access and the Press," The Association of the Federal Bar of New Jersey, 36th Annual United States District Court Judicial Conference, West Orange, New Jersey. Video supplied.

March 21, 2012: Mistress of Ceremonies, "Women's Initiative and Leaders in the Law, Platinum Gala," New Jersey Women Lawyers Association, Jersey City, New Jersey. Remarks supplied.

February 8, 2012: Presiding Judge, Mock Trial, Saint Paul Inside the Walls.

Madison, New Jersey. This was a continuing legal education program in which lawyers participated in a mock trial based on a hypothetical involving a last will and testament dispute. I have no notes, transcripts, or recordings, but press coverage is supplied. The event was sponsored by Saint Paul Inside the Walls, 205 Madison Avenue, Madison, NJ 07940.

October 26, 2011: Acceptance Speech, "Peter Rodino Distinguished Leadership Award," Seton Hall University School of Law, Newark, New Jersey. Remarks supplied.

October 18, 2011: Panelist, "Professionalism in the United States District Court," District Court of New Jersey, Newark, New Jersey. This was a panel of federal judges and practicing lawyers in which professionalism and ethics in daily practice was addressed. I have no notes, transcripts, or recordings. The event was sponsored by the District Court of New Jersey, c/o William F. Walsh, Clerk, Martin Luther King Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102.

July 28, 2011: Speaker, NJ LEEP (New Jersey Law and Education Empowerment Project), District Court of New Jersey, Newark, New Jersey. I presented an overview of the federal court system and discussed various opportunities in the legal profession. I have no notes, transcripts, or recordings. The event was sponsored by NJ LEEP, Inc., Seton Hall Law School, 1109 Raymond Blvd., Newark, New Jersey 07102.

March 30, 2011: Mistress of Ceremonies, "Women's Initiative and Leaders in the Law, Platinum Gala," Somerset, Women Lawyers Association, New Jersey, New Jersey. Remarks supplied.

March 24, 2010: Mistress of Ceremonies, "Women's Initiative and Leaders in the Law, Platinum Gala," New Jersey Women Lawyers Association, Somerset, New Jersey. I introduced each of the award recipients, keynote speaker, and scholarship recipients. I have no notes, transcripts, or recordings. The event was sponsored by the New Jersey Women Lawyers Association, 633 Franklin Avenue, PMB #118, Nutley, New Jersey 07110.

November 12, 2009: Panelist, "Professionalism and Ethics in the Courts," District Court of New Jersey, Newark, New Jersey. This was a panel of women judges and practitioners addressing ethics issues in practice. I have no notes, transcripts, or recordings. The event was sponsored by the New Jersey Women Lawyers Association, 633 Franklin Avenue, PMB #118, Nutley, New Jersey 07110.

May 15, 2009: Panelist, "Pharma Industry Forum, Recent Developments on Pharmaceutical Industry," Rutgers Law School, Newark, New Jersey. This was a panel of federal judges, professors and in-house lawyers addressing recent legal

developments affecting the pharmaceutical industry. I have no notes, transcripts, or recordings. The event was sponsored by Rutgers School of Law–Newark, S.I. Newhouse Center for Law and Justice, 123 Washington Street, Newark, New Jersey 07102.

April 2, 2009: Acceptance Speech, “2009 Women’s Initiative and Leaders In The Law, Platinum Award,” New Jersey Women Lawyers Association, North Brunswick, New Jersey. Remarks supplied.

June 25, 2008: Judge, Fourth Annual Intercollegiate Business, Legal Ethics Case Competition, Berkeley College, Newark, New Jersey. Together with a panel of business leaders and lawyers, I sat as a judge in a moot court competition. I have no notes, transcripts or recordings. The event was sponsored by Berkeley College, 536 Broad Street, Newark, New Jersey 07102.

June 1, 2008: Speaker, Saint Dominic Academy Commencement, Jersey City, New Jersey. Remarks supplied.

June 7, 2007: Speaker, introduction of the Honorable Marie Garibaldi, New Jersey Supreme Court, for presentation of the William J. Brennan Award, The Association of the Federal Bar of New Jersey, West Orange, New Jersey. Remarks supplied.

March 7, 2007: Speaker, Career Day, Saint Dominic Academy, Jersey City, New Jersey. I spoke to high school students about careers in the law. I have no notes, transcripts or recordings. The event was sponsored by Saint Dominic Academy, 2572 Kennedy Blvd., Jersey City, New Jersey 07002.

February 1, 2007: Speaker, Career Day, Trinity Academy, Caldwell, New Jersey. I spoke to elementary students about careers in the law. I have no notes, transcripts, or recordings. The event was sponsored by Trinity Academy, 235 Bloomfield Ave, Caldwell, New Jersey 07006.

November 15, 2006: Panelist, “Nuts and Bolts of Federal Practice, A View from District Court Judges, Magistrates and Lawyers,” West Orange, NJ. This was a panel of federal judges and lawyers discussing issues ranging from discovery disputes to summary judgment motions to trial. I have no notes, transcripts, or recordings. The event was sponsored by the The Association of the Federal Bar of New Jersey, P.O. Box 172, West Allenhurst, New Jersey 07711.

May 10, 2006: Speaker, presentation of the Distinguished Service Award to the Honorable William Bassler, District Court of New Jersey, Newark, NJ, District Court Historical Society. Remarks supplied.

October 14, 2004: Panelist, The 8th Annual Litigating Employment Cases: Views From The Bench, New York, New York. I sat on a panel entitled “Pre-Litigation

Phase II" with several lawyers and judges in which pre-litigation legal issues were discussed. I have no notes, transcripts, or recordings. The event was co-sponsored by Fordham University School of Law, 140 West 62nd Street, New York, New York 10023, and Georgetown University Law Center Continuing Legal Education, 600 New Jersey Avenue NW, Washington, District of Columbia 20001.

March 2004: Panelist, "Electronic Discovery in Federal Court Litigation," The Association of the Federal Bar of New Jersey, 28th Annual United States District Court Judicial Conference, West Orange, New Jersey. This was a panel of federal judges and practitioners discussing the federal rules regarding electronic discovery and case law developments. I have no notes, transcripts or recordings, but press coverage is supplied. The event was sponsored by The Association of the Federal Bar of New Jersey, P.O. Box 172, West Allenhurst, New Jersey 07711.

March 2003: Speaker, "ABC's of Federal Practice," The New Jersey Institute for Continuing Legal Education, Newark, New Jersey. Outline supplied.

November 7, 2002: Speaker, Seton Hall Law Review Alumni Reception, Seton Hall University School of Law, Newark, New Jersey. Remarks supplied.

January 2002: Panelist, "Practice Before United States Magistrate Judges," New Jersey Law Center and the New Jersey Institute for Continuing Legal Education New Brunswick, New Jersey. Audio supplied.

January 31, 2001: Speaker, "Investiture Ceremony of United States Magistrate Judge Madeline Cox Arleo," District of New Jersey, Newark, New Jersey. Remarks supplied.

September 20, 2000: Speaker, Federal Civil Pro Bono Educational Program, New Brunswick, New Jersey. I participated in a panel discussion with federal judges and lawyers regarding issues in federal pro bono cases. I have no notes, transcripts, or recordings. The event was sponsored by the New Jersey Institute for Continuing Legal Education, One Constitution Square, New Brunswick, New Jersey 08901.

September 22, 1999: Speaker, Federal Civil Pro Bono Educational Program, New Brunswick, New Jersey. I participated in a panel discussion with federal judges and lawyers regarding issues in federal pro bono cases. I have no notes, transcripts, or recordings. The event was sponsored by the New Jersey Institute for Continuing Legal Education, One Constitution Square, New Brunswick, New Jersey 08901.

December 11, 1998: Speaker, "Employment Law In Federal Courts, Pendent Jurisdiction Over State Claims," New Jersey Institute for Continuing Legal

Education, New Brunswick, New Jersey. Outline supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Ecumenical Israel Pilgrimage Trip - Day 3, Notre Dame Catholic Church, North Caldwell, New Jersey and Agudath Israel Synagogue, Caldwell, New Jersey, January 2012. Video available at:
<https://www.youtube.com/watch?v=zh1ROb7PUkM>.

New Jersey Women Lawyers Association ("NJWLA"). *Women in the Profession*, February 2011. Video supplied.

Saint Dominic Academy Viewbook. Comment as alumna, 2011. Copy supplied.

Mitchel Maddux, *At The Top of Their Profession: N.J. Women Changing The Look of Federal Bench*, *The Record*, April 26, 2003. Copy supplied.

Alum Judges Find Hectic Days The Norm, *Pentimento*, St. Dominic Academy, Volume 36, Summer 2001. Copy supplied.

Evelyn Appar, *Civil Litigator Gets The Nod As Magistrate*, *New Jersey Lawyer: The Weekly Newspaper*, Volume 9, Issue 41, October 9, 2000. Copy supplied.

Rocco Cammarere, *Marie Garibaldi: What A Legacy!*, *New Jersey Lawyer: The Weekly Newspaper*, Volume 9, Issue 1, January 3, 2000. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

In December 2000, I was appointed as a United States Magistrate Judge for the District of New Jersey. I was reappointed to a second term in December 2008. I preside over all pre-trial proceedings, including discovery, non-dispositive motion practice and settlement negotiations in civil cases. Where all parties consent, I preside over civil actions in full. In addition, I preside over the initial phase of all criminal matters, including initial appearances and bail hearings, and over certain criminal matters, including petty offenses and misdemeanors, in full. Since 2008, I have also served as the compliance judge for the Court's district-wide mediation program pursuant to Local R. 301.1. In January 2013, I started the first reentry court in the District of New Jersey and serve as the presiding Judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

As a United States Magistrate Judge, I have presided over five cases that have gone to verdict or judgment. Because I can only preside over civil matters by consent of the parties and over criminal trials involving misdemeanor and petty offenses, only a small percentage of the thousands of cases I have handled have gone to trial.

1. Of these, approximately what percent were:

jury trials:	40%
bench trials:	60%
civil proceedings:	80%
criminal proceedings:	20%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

I have listed the cases in alphabetical order.

1. Campbell v. United States, et al., No. 02-2871 (MCA).

This action was brought by Plaintiff Campbell against the United States of America pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80, and the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 239(g)-(n), seeking damages for personal injuries she and her son sustained during his delivery on July 26, 1999 at Muhlenberg Regional Medical Center. Campbell claimed that the doctors and nurse midwives employed by the Plainfield Neighborhood Health Center, a federally funded health center, deviated from accepted standards of care with respect to the delivery of her baby. The parties consented to my jurisdiction. I presided over a six-day bench trial. Thereafter, I issued Findings of Fact and Conclusions of Law, entering judgment in favor of Defendant, the United States of America, and against Plaintiff, which is available at Campbell v. United States, et al., No. 02-2871 (MCA), 2005 WL 1387652 (D.N.J. June 10, 2005). No appeal was taken from my decision.

Counsel for Plaintiff:

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Morristown, New Jersey 07960
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Counsel for Defendant:

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Yanet Perez Noble, Esq.
Kluger Healey, LLC
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2. Celgene Corp., et al. v. KV Pharm. Co., No. 07-4819 (SDW).

This case involved a Hatch-Waxman patent dispute between Celgene, which was the assignee of two patents related to treatment using methylphenidate in an extended release form, and KV Pharmaceutical Company ("KV"), which sought to market generic extended release capsules. After KV submitted an Abbreviated New Drug Application to the FDA that included a paragraph IV Certification regarding Celgene's patents, Celgene sued KV for patent infringement. Celgene made a motion to disqualify KV's counsel, the Buchanan Ingersoll law firm, on the grounds that it concurrently represented Celgene in a separate matter and that Celgene did not give informed consent to the dual representation. Following oral argument, I granted the motion to disqualify counsel and issued a written opinion, which is available at Celgene Corp., et al. v. KV Pharm. Co., No. 07-4819 (SDW), 2008 U.S. Dist. LEXIS 58735 (D.N.J. July 18, 2008). The decision was not appealed. I continued to handle all aspects of case management until the case was reassigned to the Trenton vicinage.

Counsel for Celgene:

Charles M. Lizza, Esq.
Saul Ewing, LLP
One Riverfront Plaza
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Tel: 973-286-6715

Counsel for Novartis:

William J. O'Shaughnessey, Esq.
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Four Gateway Center
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Counsel for KV Pharm.:

Mary Susan Henitin, Esq.
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3. Miller v. Zimmer Holdings, Inc., No. 09-4414 (SDW) (multi-district litigation).

This case involves more than one hundred centralized state product liability/personal injury cases, all alleging that a medical device, the Zimmer Durom acetabular component ("Durom Hip"), was defectively designed, manufactured, tested, marketed, promoted and sold by Defendant Zimmer, Inc. and other Zimmer entities, causing personal injuries and damages to the Plaintiffs. Zimmer denies that any Durom Hip was defective or caused injuries or that the company breached its duty of care to Plaintiffs in any way.

Since this multi-district litigation was assigned to me in 2009, I have presided over extensive pretrial proceedings, including numerous case management conferences, oral arguments and hearings. I have resolved jurisdictional disputes, including motions to remand; discovery disputes, including claims of privilege over documents held by Zimmer in Switzerland; requests for protective orders, otherwise limiting the production of documents and witnesses; and disputes over production of exemplars for destructive testing by experts. I have also successfully coordinated discovery in the cases before me with similar actions going forward in state courts around the country. In addition, I mediated five cases after private mediation failed. This multi-district litigation is presently ongoing.

Counsel for Plaintiffs' Liaison Counsel:

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Christopher A. Seeger, Esq.
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James Cecchi, Esq.
Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C.
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George G. Tankard, III, Esq.
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Counsel for Defendants:

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Indianapolis, Indiana 46204
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Edward J. Fanning, Jr., Esq.
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4. Murdock v. Borough of Edgewater, et al., No. 08-2268 (MCA).

This civil rights action arose from circumstances surrounding the arrest of Plaintiff Murdock, following a domestic dispute at his home in Edgewater, NJ. Plaintiff brought claims for false/unlawful arrest and excessive force in violation of the Fourth and Fourteenth Amendments pursuant to 42 U.S.C. § 1983; state law claims for assault and battery against various police officers; and a *Monell* claim for federal constitutional violations against the Edgewater Police Department and the Chief of Police. I managed all aspects of pretrial discovery, and the parties consented to my jurisdiction for trial. I issued an opinion granting in part and denying in part summary judgment, which is available at Murdock v. Borough of Edgewater, et al., No. 08-2268 (MCA), 2011 U.S. Dist. LEXIS 126428 (D.N.J. Nov. 2, 2011). The case settled on the first day of trial.

Counsel for Plaintiff:

Richard T. Luzzi, Esq.
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Tel: 973-983-7020

Counsel for Defendants:

Harry D. Norton, Esq.
Norton, Sheehy & Higgins, P.C.
One Garret Mountain Plaza, 5th Floor
Woodland Park, New Jersey 07424
Tel: 973-881-1101

5. N. Jersey Brain & Spine Ctr. v. Conn. Gen. Life Ins. Co., No. 10-4260 (SDW).

Plaintiff was a neurosurgical medical practice that provided medical services to individuals covered under healthcare insurance plans of Connecticut General Life Insurance Company ("CGLIC"). As an out-of-network provider, Plaintiff had no contractual agreement with CGLIC for payment of services. Plaintiff alleged that before providing medical services to each plan participant, its representative spoke with CGLIC's representative, who confirmed out-of-network coverage and agreed that CGLIC would pay Plaintiff's customary and reasonable fees. Relying on these representations, Plaintiff rendered medical services to the patients, but CGLIC subsequently paid Plaintiff significantly less than the amount it had previously agreed to pay. Plaintiff filed this action in Superior Court of New Jersey, Bergen County, asserting claims for promissory estoppel, unjust enrichment, and negligent and intentional representation. CGLIC removed the case to this court based on federal question jurisdiction due to ERISA preemption. Thereafter, Plaintiff filed a motion for remand. I issued a report and recommendation denying the motion to remand, which is available at N. Jersey Brain & Spine Ctr. v. Conn. Gen. Life Ins. Co., No. 10-4260 (SDW), 2011 U.S. Dist. LEXIS 119762 (D.N.J. June 30, 2011). My report and recommendation was adopted by the district court, which is available at N. Jersey Brain & Spine Ctr. v. Conn. Gen. Life Ins. Co., No. 10-4260 (SDW), 2011 U.S. Dist. LEXIS 119758 (D.N.J. Oct. 6, 2011). Following those opinions, the case settled.

Counsel for Plaintiff:

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Mazie, Slater, Katz & Freeman, LLC
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Tel: 973-228-9898

Counsel for Defendant:

Eric Evans Wohlforth, Esq.
Gibbons, P.C.
One Gateway Center
Newark, New Jersey 07102
Tel: 973-596-4879

6. Reilly v. Novartis Pharm. Corp., et al., No. 07-4665 (SDW).

Plaintiff filed this action in New Jersey state court seeking damages for bodily injury, including breast cancer, which she allegedly suffered as a result of using the topical medications Elidel and Protopic, manufactured by the Novartis and Astellas Pharma, Inc. Plaintiff alleged violations of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1 ("NJCFA"), violations of the New Jersey Product Liability Act, N.J.S.A. § 2A:58C-1 ("NJPLA"), and New Jersey common law, and sought punitive damages as well as compensatory damages. Defendants removed the case to federal court and Plaintiff sought remand on the grounds that no federal question was presented. Defendants argued that Plaintiff's claim for punitive damages under the NJPLA and NJCFA raised a federal question because the claim was based in part on Plaintiff's assertion that Defendants intentionally withheld information from the Food and Drug Administration. I issued an opinion recommending that Plaintiff's motion to remand be granted, which is available at Reilly v. Novartis Pharm. Corp., et al., No. 07-4665 (SDW), 2009 U.S. Dist. LEXIS 85516 (D.N.J. July 28, 2009). My report and recommendation was adopted by the district court, which is available at Reilly v. Novartis Pharm. Corp., et al., No. 07-4665 (SDW), 2009 U.S. Dist. LEXIS 85515 (D.N.J., Sept. 18, 2009).

Counsel for Plaintiff:

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Seeger Weiss, LLP
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New York, New York 10005
Tel: 212-584-0700

Counsel for Defendant Novartis:

Beth S. Rose, Esq.
Sills, Cummis, & Gross P.C.
One Riverfront Plaza
Newark, New Jersey 07102

Tel: 973-643-7000

Ethan D. Stein, Esq.
Gibbons, P.C.
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Tel: 212-613-2041

Counsel for Defendant Astellas:

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Astellas US, LLC
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Tel: 224-205-8556

Robert G. Stahl, Esq.
Law Offices of Robert G. Stahl, LLC
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Westfield, New Jersey 07090
Tel: 908-301-9001

7. The Prudential Co. of Am., et al. v. UBS Real Estate Sec., et al., No. 13-2953 (KM).

This matter stems from Plaintiff's purchase of more than \$208 million in Residential Mortgage-Backed Securities ("RMBS") from the UBS Defendants. Plaintiff originally filed this action in Superior Court of New Jersey, Essex County, alleging that the offering materials made numerous material misrepresentations and omissions regarding the underwriting guidelines followed by the originators of the underlying mortgage loans, as well as material misrepresentations regarding the risk profile and credit quality of the loans. As a result, Plaintiff's alleged default rates on the mortgage loans increased and the value of Plaintiff's certificates decreased. Plaintiff alleged various state law claims including common law fraud and violations of the New Jersey Civil RICO statute, N.J.S.A. 2C:41-1. Defendants removed this case to federal court pursuant to 28 U.S.C. § 1334(b), arguing that the case is related to "several bankruptcy proceedings" and that "the properly joined parties to this action are diverse." I issued a report and recommendation that Plaintiff's motion to remand be granted, which is available at The Prudential Co. of Am., et al. v. UBS Real Estate Sec., et al., No. 13-2953 (KM), 2013 U.S. Dist. LEXIS 183884 (D.N.J. Dec. 16, 2013). My report and recommendation was adopted by the district court, which is available at The Prudential Co. of Am., et al. v. UBS Real Estate Sec., et al., No. 13-02953, 2014 U.S. Dist. LEXIS 6429 (D.N.J., Jan. 16, 2014).

Counsel for Plaintiff:

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Nukk-Freeman & Cerra, P.C.
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Tel: 973-665-9100

Counsel for Defendants:

Alan S. Naar, Esq.
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Iselin, New Jersey 08830
Tel: 732-549-5600

8. Sec. & Exch. Comm'n v. Teo, et al., No. 04-1815 (SDW).

This was a Securities and Exchange Commission ("SEC") enforcement action arising out of Defendant Teo's ("Teo") alleged scheme to conceal his true beneficial ownership of the stock of Musicland Stores Corporation, held by a Trust, and to cause material false and misleading statements and omissions in SEC public filings. The SEC alleged that Teo thereafter sold those shares at a profit of approximately \$22 million. I handled all pretrial aspects of case management, including multiple hearings on the applicability of the crime-fraud exception to the attorney-client privilege. I issued an opinion addressing the attorney-client privilege issue, which is available at Sec. & Exch. Comm'n v. Teo, No. 04-1815, 2009 U.S. Dist. LEXIS 49537 (D.N.J. June 11, 2009). No appeal was taken from my rulings. Following the district court's ruling on summary judgment, the case was appealed to the Third Circuit Court of Appeals, which affirmed.

Counsel for Plaintiff:

David P. Stoelting, Esq.
United States Securities and Exchange Commission
3 World Financial Center, Suite 4300
New York, New York 10281
Tel: 212-336-0174

Counsel for Defendant:

Paul L. Fishman
United States Attorney
970 Broad Street, Room 700
Newark, New Jersey 07102
Tel: 973-645-2700

9. United States v. Bergrin, et al., No. 09-369 (WJM).

A criminal indictment was returned against Defendant Bergrin, a criminal defense attorney and former Assistant United States Attorney, charging him with various offenses, including Murdering a Federal Witness and Conspiracy to Murder a Federal Witness, in violation of 18 U.S.C. § 1512, Racketeering and Racketeering Conspiracy, in violation of 18 U.S.C. §§ 1962 (c), (d), Wire Fraud and Wire Fraud Conspiracy, in violation of 18 U.S.C. §§ 1343 and 1349, and violations of the Travel Act, 18 U.S.C. § 1952, and Conspiracy to Violate the Travel Act, in violation of 18 U.S.C. § 371. The parties appeared before me for an initial appearance and for bail. Following a two-day hearing on May 27 and May 28, 2009, I denied bail and issued an opinion and order, which is available at United States v. Bergrin, et al., No. 09-369 (WJM), 2009 U.S. Dist. LEXIS 46607 (D.N.J. May 29, 2009).

Counsel for the United States:

John Gay, AUSA and Joseph N. Minish, AUSA
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Counsel for Defendant:

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10. United States v. Hill, No. 12-6081.

On June 7, 2012, the United States filed a three-count information against singer/songwriter Hill, charging her with three misdemeanor counts of failure to file tax returns, each in violation of 26 U.S.C. § 1703. The case was transferred to me for sentencing after Magistrate Judge Michael Shipp became a district judge. Defendants sought a non-custodial sentence and the government sought the maximum sentence of three years in prison (one year for each count). Both parties raised procedural and substantive objections to the findings in the Pretrial Sentence Report, and there was substantial briefing on both sides. On May 7, 2013, following lengthy oral argument, I imposed a three month sentence (one month for each count), one year supervised release and three months home confinement with electronic monitoring, as well as a \$60,000 fine and a \$75 special assessment. The sentence was not appealed by either party.

Counsel for United States:

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Counsel for Defendant:

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Santa Monica, California 90404
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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Campbell v. United States, et al., No. 02-2871 (MCA), 2005 WL 1387652 (D.N.J. June 10, 2005).

Counsel for Plaintiff:

Peter A. Bogaard (now Judge of the Superior Court)
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Counsel for Defendant:

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2. Chabban v. Criscito, No. 08-1567 (SDW), 2013 U.S. Dist. LEXIS 58051 (D.N.J. Apr. 3, 2013).

Counsel for Plaintiff:

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Counsel for Defendant:

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3. Celgene Corp., et al. v. KV Pharm. Co., No. 07-4819 (SDW), 2008 U.S. Dist. LEXIS 58735 (D.N.J. July 18, 2008).

Counsel for Celgene:

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Counsel for Novartis:

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Counsel for KV Pharm.:

Mary Susan Henifin, Esq.
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4. Khrakovskiy v. Denise, No. 06-1033 (MCA), 2009 U.S. Dist. LEXIS 96650 (D.N.J. Oct. 14, 2009).

Counsel for Plaintiff:

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Counsel for Defendants:

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5. Murdock v. Borough of Edgewater, et al., No. 08-2268 (MCA), 2011 U.S. Dist. LEXIS 126428 (D.N.J. Nov. 2, 2011).

Counsel for Plaintiff:

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Counsel for Defendants:

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6. N. Jersey Brain & Spine Ctr. v. Conn. Gen. Life Ins. Co., No. 10-4260 (SDW), 2011 U.S. Dist. LEXIS 119762 (D.N.J. June 30, 2011).

Counsel for Plaintiff:

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1270

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Counsel for Defendant:

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7. The Prudential Co. of Am., et al. v. UBS Real Estate Sec., et al., No. 13-2953 (KM), 2013 U.S. Dist. LEXIS 183884 (D.N.J. Dec. 16, 2013).

Counsel for Plaintiff:

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Counsel for Defendants:

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8. Reilly v. Novartis Pharm. Corp., et al., No. 07-4665 (SDW), 2009 U.S. Dist. LEXIS 85516 (D.N.J. July 28, 2009).

Counsel for Plaintiff:

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Counsel for Defendant Novartis:

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1271

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Robert G. Stahl, Esq.
Law Offices of Robert G. Stahl, L.L.C.
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Tel: 908-301-9001

9. Sec. & Exch. Comm'n v. Teo, et al., No. 04-1815 (SDW), 2009 U.S. Dist. LEXIS 49537 (D.N.J. June 11, 2009).

Counsel for Plaintiff:

David P. Stoelting, Esq.
United States Securities and Exchange Commission
3 World Financial Center, Suite 4300
New York, NY 10281
Tel: 212-336-0174

Counsel for Defendant:

Paul L. Fishman
United States Attorney
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10. United States v. Bergrin, et al., No. 09-369 (WJM), 2009 U.S. Dist. LEXIS 46607 (D.N.J. May 29, 2009).

Counsel for the United States:

John Gay, AUSA and Joseph N. Minish, AUSA
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Counsel for Defendant:

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- e. Provide a list of all cases in which certiorari was requested or granted.

To the best of my knowledge, certiorari has not been requested in any of my cases.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have undertaken a search of all decisions on LexisNexis and Westlaw and my internal files to locate any Reports and Recommendations which have been reversed, rejected or modified by a reviewing court. To the best of my knowledge, none of my Reports and Recommendations have ever been rejected or reversed by a District Judge. Please note the following cases where my report and recommendation has been modified:

In Aerogroup Int'l, Inc. v. Ozburn-Hessey Logistics, the district court affirmed the imposition of discovery sanctions, but reduced the monetary amount of the sanction even further than the "drastic reduction" that I made from the amount requested by the moving party. My Report and Recommendation is available at Aerogroup Int'l, Inc. v. Ozburn-Hessey Logistics, No. 08-4217, 2010 U.S. Dist. LEXIS 120931 (D.N.J. Nov. 15, 2010). The district court opinion is available at Aerogroup Int'l, Inc. v.

Ozburn-Hessey Logistics, No. 08-4217, 2011 U.S. Dist. LEXIS 45322 (D.N.J. Apr. 27, 2011).

In United States ex rel. Simring v. Univ. Physician Assocs., the district court affirmed the grant of attorneys' fees, but adopted a "blended rate" for compensation for legal research and modified the monetary amount of the attorneys' fees awarded to Plaintiff. My Report and Recommendation is available at United States ex rel. Simring v. Univ. Physician Assocs., No. 04-3530, 2012 U.S. Dist. LEXIS 187848 (D.N.J. Oct. 2, 2012). The district court opinion is available at United States ex rel. Simring v. Univ. Physician Assocs., No. 04-3530, 2013 U.S. Dist. LEXIS 179451 (D.N.J. Aug. 21, 2013).

In Shandex Indus., Inc. v. Vent Right Corp. & Mario J. Kaseda, the district court affirmed the entry of default against the corporate pro se defendant but, upon balancing discretionary factors, allowed the case to proceed against the pro se individual. My Report and Recommendation is available at Shandex Indus., Inc. v. Vent Right Corp. & Mario J. Kaseda, No. 09-4148, 2011 U.S. Dist. LEXIS 140982 (D.N.J. Dec. 7, 2011). A copy of the district court opinion is supplied.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a magistrate judge, I issue orders on non-dispositive matters or orders on dispositive matters in consent cases and I issue reports and recommendations on all dispositive matters referred to me. My non-dispositive orders include discovery matters, motions to amend the pleadings, motions to extend the discovery schedule and other miscellaneous civil motions. I issue hundreds of such orders in any given year. Very few of those orders are published, although I have filed all of my orders and opinions with our court's electronic case filing system. With respect to dispositive motions referred to me by the district judge, those reports and recommendations are published electronically on the court's electronic case filing system which is available to the public. In addition, the majority of my decisions addressing substantive issues are published electronically on Westlaw and LexisNexis.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Murdock v. Borough of Edgewater, No. 08-2268 (MCA), 2011 U.S. Dist. LEXIS 126428 (D.N.J. Nov. 2, 2011).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether

majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. Recusal: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

In keeping with the Code of Conduct for United States Judges, 28 U.S.C. § 455, I review every new file assigned to me to ensure that no conflict of interest exists. I maintain a standing recusal list with the Clerk's Office. Currently on my recusal list are my husband, Frank P. Arleo, Esq., and the other lawyers in his law firm, Arleo & Donohue, LLC, and any case in which either my husband or I has a financial interest. I also recuse myself in any case where I have a significantly close relationship with counsel, parties or witnesses (family, business or social). In the event of uncertainty, I err on the side of disqualification.

I have recused myself *sua sponte* in a civil rights case brought against the Jersey City Police Department, in which my first cousin, Paul Wolleon, served as a Deputy Chief of Police. I disclosed my close familial relationship with Deputy Chief Wolleon at the initial scheduling conference, and when I learned that he could potentially be a party or fact witness, I recused myself *sua sponte*. Razzoli v. Jersey City, No. 06-1504 (SDW).

I have recused myself *sua sponte* in a civil rights case brought against the Bayonne Police Department, in which my first cousin, Drew Nickrasz, serves as a Deputy Chief of Police. I disclosed my close familial relationship with Deputy Chief Nickrasz at the initial scheduling conference, and when I learned that he could potentially be a party or fact witness, I recused myself *sua sponte*. Kimbrell v. City of Bayonne, No. 06-1827 (JAG).

I have undertaken a search of all decisions on LexisNexis and Westlaw and my internal files to locate any motions for recusal and opinions related thereto. To the best of my knowledge, only pro se litigants have filed recusal motions or informal applications against me, with the exception of one lawyer, not licensed in New Jersey, who filed such an application on behalf of his litigant wife, as described below. All motions/applications have been denied, and if appeal was taken, the denial of recusal was affirmed. I have located the following motions/applications:

1. In Shermoff v. Hewlett Packard Co., No. 04-4390 (JAP), Frank Shermoff, a lawyer not licensed in New Jersey, filed a post-hearing brief on behalf of his wife, claiming that I should recuse myself because of personal knowledge of the disputed facts relevant to the terms of settlement. Applying the standard of 28 U.S.C. § 455(b)(1), I denied the recusal motion. The district court affirmed my decision in a written opinion.
2. In Dukes v. Lancer Ins. Co., No. 08-4948 (JAG), a pro se plaintiff filed a recusal motion against me on the grounds that I was prejudiced against him based on his race and his pro se status. Applying the standard of 28 U.S.C. § 455(b)(1), I denied the recusal motion. No appeal was taken.
3. In DIRECTV, Inc. v. Jarvis, No. 04-55 (SDW), a pro se plaintiff made a recusal motion on multiple grounds. Applying the standard of 28 U.S.C. § 455(b)(1), I denied the recusal motion. Plaintiff filed a writ of mandamus with the Third Circuit Court of Appeals, seeking recusal. The Third Circuit denied the writ of mandamus.
4. In Thompson v. Eva's Vill. & Sheltering Program, No. 04-2548, a pro se plaintiff filed a recusal motion against me and the District Judge on multiple grounds. Applying the standard of 28 U.S.C. § 455(b)(1), I denied the recusal motion. The District Court affirmed my decision and denied subsequent applications for recusal of myself and the District Judge. In two separate opinions, the Third Circuit affirmed the denial of recusal.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office other than judicial office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever

held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held any offices in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Upon graduation from law school in 1989, I served a one year clerkship for the Honorable Marie Garibaldi of the New Jersey Supreme Court from September 1989 to September 1990.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1990 – 1994, Summer 1988
Clapp & Eisenberg
One Newark Center
Newark, New Jersey 07102
Associate (1990 – 1994)
Summer Associate (1988)

1994 – 1998
Barry & McMoran
One Newark Center
Newark, New Jersey 07102
Associate (1994 – 1998)
Litigation Partner (1998)

1998 – 2000
Tompkins, McGuire, Wachenfeld & Barry, L.L.P.
Four Gateway Center
Newark, New Jersey 07102

Litigation Partner

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

As a practicing lawyer, I never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Following my clerkship, I joined the firm of Clapp & Eisenberg in 1990, where I engaged in a general litigation practice handling product liability, commercial, antitrust, employment and discrimination cases. After the dissolution of Clapp & Eisenberg in 1994, I joined the newly formed firm of Barry & McMoran as a litigation associate and was elevated to partner in January 1998. At Barry & McMoran, I represented plaintiffs in discrimination cases based on age, race and national origin, defended employment and civil rights cases brought against corporations and government bodies, and negotiated employment and severance agreements. I also handled civil and criminal appeals. In October 1998, Barry & McMoran merged with Tompkins, McGuire, & Wachenfeld to form Tompkins, McGuire, Wachenfeld & Barry (the "Tompkins firm"), where I was a litigation partner until joining the bench in December 2000. At the Tompkins firm, I continued to handle employment and civil rights cases, and also engaged in a general litigation practice.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1990 to 1994 while at Clapp & Eisenberg, I represented both individuals and corporations in both federal and state court in a range of civil litigation including product liability, commercial, antitrust, employment and discrimination cases. Representative corporate clients included the Trump Organization, Ford New Holland, the Township of Millburn, and the New Jersey Joint Underwriters Fund. From 1994 to 1998, while at Barry & McMoran, I continued to represent individuals and corporations in a range of civil litigation. Representative clients included the Trump Organization, the City of Atlantic City, Shinnihon U.S.A. and various individuals. From October 1998 until December 2000, while at the Tompkins, McGuire, Wachenfeld and Barry firm, I continued to represent individuals and corporations in civil litigation. Representative clients continued to be the Trump Organization and the City of Atlantic City, as well as Vitro Com, Inc., Planet Honda, and various individuals.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Approximately 90% of my practice as an attorney was in litigation. As a new associate at Clapp & Eisenberg, I frequently appeared in federal and state court for hearings and motions with a senior partner. As my practice developed, and I became more experienced, I frequently handled discovery motions and hearings on my own. When elevated to partner in 1996 at Barry & McMoran, I was often counsel of record and lead attorney in cases pending in both federal and state court. I continued to appear frequently in both state and federal court. These responsibilities continued as a litigation partner at the Tompkins firm.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 45% |
| 2. state courts of record: | 45% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 10% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 95% |
| 2. criminal proceedings: | 5% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried one case to verdict as associate counsel. I also assisted as trial counsel early in my career in a substantial antitrust case tried in New Jersey state court. I was counsel of record in many cases which I handled through discovery, summary judgment motions, and was prepared for trial when the case settled. I also worked on various criminal and civil appeals including one federal case where I had primary responsibility for drafting the brief and handled the argument in the Third Circuit Court of Appeals.

- i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 0% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I have listed the cases in alphabetical order.

1. Allen v. Computer Scis. Corp., No. 93-1794, Superior Court of New Jersey, Essex County (1993), United States District Court for District of New Jersey, Hon. Dickinson R. Debevoise, U.S.D.J.

I represented thirteen former employees in the staffing and computer services industry who filed this age discrimination case against their former employer. I handled all aspects of pretrial discovery, including numerous party and expert depositions, and extensive pretrial motion practice. I also handled a successful motion to remand after the case was removed to federal court. After extensive discovery, I was able to settle the case for Plaintiffs.

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Theresa Donahue Egler, Esq.,
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
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Morristown, New Jersey 07960
Tel: 973-656-1600

2. Baldassarre v. Butler, et al., No. A-46790T5, Superior Court of New Jersey, Appellate Division (1992).

Plaintiffs filed this action against their attorney for fraud and negligence, seeking rescission of a real estate contract and damages based on the lawyer's conduct in representing both the buyer and seller in a real estate transaction. I represented the Defendant lawyer and his law firm. Following a bench trial, the court found no fraud or negligence and entered a judgment in favor of the Defendant lawyer. I assisted in defending the appeal in the Superior Court of New Jersey, Appellate Division and the potential claims against the lawyer's malpractice insurance company, which had failed to indemnify and provide a complete defense. After an adverse decision by the Appellate Division, I assisted in drafting the appeal to the New Jersey Supreme Court, which affirmed in part and reversed in part the Appellate Division. Just prior to the issuance of the Supreme Court's opinion, we settled the case. The Appellate Division opinion is found at 254 N.J. Super. 502 (App. Div. 1992), and the Supreme Court's opinion at 132 N.J. 278 (1993).

Counsel for Plaintiffs:

Edwin J. McCreedy, Esq.,
McCreedy & Cox
6 Commerce Drive
Cranford, New Jersey 07016
Tel: 908-709-0400

3. Barna v. Perth Amboy, No. 92-5133, United States District Court for the District of New Jersey. Hon. Alfred J. Lechner, Jr.

Plaintiffs brought this 42 U.S.C. § 1983 civil rights action against individual police officers in the City of Perth Amboy and the Township of Woodbridge alleging that their constitutional rights were violated as the result of an alleged assault, the subsequent detention of Mrs. Barna, and the arrest and prosecution of Mr. Barna. Following presentation of Plaintiffs' case, the district court granted Defendants' motion for a directed verdict. My firm was retained to handle the appeal on behalf of the Plaintiffs. I drafted the appellate brief and argued on behalf of Plaintiffs before the United States Court of Appeals for the Third Circuit, which affirmed in part and reversed in part the ruling of the district court. The Third Circuit opinion is reported at 42 F.3d 809 (3d Cir. 1994). I also handled the post-appeal motions, including a motion for fees before the district court.

Counsel for Defendants:

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Tel: 732-819-8777

Robert Musto, Esq.

51 Green Street
Woodbridge, New Jersey 07095
Tel: 732-750-4600

4. Barone et. al., v. Shinnihon U.S.A. et. al., No. L-656-96, Superior Court of New Jersey, Law Division, Sussex County (1996).

I represented Defendant Shinnihon U.S.A. in a defense of a gender discrimination case brought against it by two former employees. I was lead counsel and handled all aspects of pretrial discovery, including fact and expert depositions and motion practice. On the first day of trial, I was able to successfully resolve the case for Defendant.

Counsel for Plaintiffs:

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Tel: 973-691-1188

5. Boutsikaris v. Atl. City, No. 95-3089, United States District Court for the District of New Jersey, Hon. Jerome B. Simandle, U.S.D.J. and Hon. Joel Rosen, U.S.M.J.

On June 27, 1995, this wrongful death action was brought by the estate of a patron at the Trump Plaza Hotel and Casino ("Trump Plaza") who died in police custody after having been arrested for violent behavior at Trump Plaza in Atlantic City, NJ. I represented Trump Plaza and was involved in all aspects of pretrial discovery, including taking and defending numerous fact witness depositions, retention and depositions of medical experts regarding cause of death, and discovery hearings. I prepared the motions for summary judgment on behalf of Trump Plaza, which were granted in part, as well as the Final Pretrial order. Prior to trial, I participated in a successful settlement conference before the Honorable Joel Rosen, U.S.M.J.

Counsel for Plaintiff:

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Counsel for Defendants:

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Catherine A. Tuohy, Esq.
Tuohy & Tuohy, Esqs.
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Tel: 609-345-0005

6. Boardwalk Props. v. BPHC Acquisition & Trump Plaza Assocs., et al., No. A-2789-90T5F, Superior Court of New Jersey, Law Division, Atlantic County, Hon. Anthony Gibson, J.S.C.

This action was filed against Trump Plaza Associates and Trump (the "Trump Defendants") for antitrust damages for allegedly interfering with the contract between Plaintiff Sands Hotel and Casino and Penthouse Properties. In addition to the antitrust claims, Plaintiff sought damages for breach of contract and tortious interference. I was part of a trial team for the Trump Defendants that was involved in extensive pretrial discovery including an appeal to the New Jersey Appellate Division on the issue of whether Plaintiffs were entitled to a jury trial. Discovery was intensive, with millions of documents produced, many depositions taken, and preparation of complex expert reports on anti-competitive conduct and antitrust injury. Following a ten-month non-jury trial before the Honorable Anthony Gibson, the Court ruled that the Trump Defendants were not liable for any wrongdoing. While the trial decision is unreported, the appeal to the Appellate Division is found at 253 N.J. Super 515 (App. Div. 1991).

Counsel for Penthouse:

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Greenbaum, Rowe, Smith & Davis, LLP
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Tel: 732-549-5600

Counsel for Sands Hotel and Casino:

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Baker & Hostetler
45 Rockefeller Plaza
New York, New York 10111
Tel: 212-589-4200

7. Hurley v. The Atl. City Police Dep't, et al., Nos. 93-260, 94-1122, United States District Court for the District of New Jersey, Hon. Joseph E. Irenas, U.S.D.J. and Hon. Robert B. Kugler, U.S.M.J.

This was a sexual harassment and discrimination case brought by a female police sergeant against the Atlantic City Police Department and her supervisors. I represented Defendant Police Captain Madamba. I managed all aspects of pretrial discovery. Discovery was intensive, with more than 100 deposition days, multiple expert reports on liability and damages, and countless discovery hearings and motions before the court. I prepared summary judgment motions, which were granted in part. I tried the case to a jury for 36 trial days spanning a three-month period. The jury found for Plaintiff and awarded compensatory damages but did not award any punitive damages against my client. I also handled numerous post-trial motions and settlement conferences before the district judge. Ultimately, the case was affirmed in part and reversed in part by the Third Circuit Court of Appeals and a final judgment was entered in August 2000. The opinions in this case are reported at 1995 U.S. Dist. LEXIS 20608 (D.N.J. 1995); 933 F. Supp. 396 (D.N.J. 1996); 944 F. Supp. 371 (D.N.J. 1996); and 1996 U.S. Dist. LEXIS 14088 (D.N.J. 1996).

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Counsel for other Defendants:

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Tuohy & Tuohy, Esqs.
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Michael J. Blee (now Judge of the New Jersey Superior Court, Law Division)
Civil Courts Building
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Richard L. Goldstein, Esq.
Marshall, Dennehey, Warner, Coleman & Goggin
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Tel: 856-414-6013

Robert S. Sandman, Esq.
Hankin, Sandman & Palladino
30 S. New York Avenue

Atlantic City, New Jersey 08401
Tel: 609-344-5161

8. Marzano v. Computer Scis. Corp., No. 94-3102, United States District Court for the District of New Jersey, Hon. Clarkson S. Fisher, U.S.D.J.

I represented the Plaintiff in this gender and pregnancy discrimination case brought against a computer consulting firm. I handled all aspects of pretrial discovery, including fact and expert depositions, pretrial motion practice and preparation of summary judgment motions. After the district court granted summary judgment in favor of Defendants, I prepared a successful appeal to the Third Circuit Court of Appeals. The Third Circuit opinion is found at 91 F.3d 497 (3d Cir. 1996). Following reversal and remand, I settled the case.

Counsel for Defendants:

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Day Pitney, LLP
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Parsippany, New Jersey 07054
Tel: 973-966-6300

Theresa Donahue Egler, Esq.,
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
10 Madison Avenue, Suite 400
Morristown, New Jersey 07960
Tel: 973-656-1600

9. Petrillo v. Borough of Surf City, No. 92-3602, United States District Court for the District of New Jersey, Hon. Mary L. Cooper, U.S.D.J.

Plaintiff filed this action after suffering serious injuries while swimming off the New Jersey shore. He asserted state law claims for failure to warn of a dangerous condition, failure to train and negligence. Defendants denied liability and asserted immunity under the New Jersey Tort Claims Act. On behalf of Plaintiff, I handled the motion for summary judgment before the district court and the subsequent appeal to the Third Circuit Court of Appeals. The Third Circuit opinion is found at 72 F.3d 385 (3d Cir. 1995). The Third Circuit affirmed the grant of summary judgment by the district court.

Counsel for Defendants:

Michael J. McKenna, Esq. (and Ronald E. Hoffman, Esq., no longer at firm)
Hiring, Gannon & McKenna
29 Hadley Ave.
Toms River, New Jersey 08753
Tel: 732-349-1800

10. Zultowsky v. CCH Inc., No. 97-1249, United States District Court for the District of New Jersey, Hon. William G. Bassler, U.S.D.J. and Hon. Dennis M. Cavanaugh, U.S.M.J.

This was a gender discrimination and sexual harassment case brought by Plaintiff Zultowsky against her employer, CCH, Inc. and filed on March 18, 1997. On behalf of Plaintiff, I handled all aspects of pretrial discovery, including fact and expert depositions, discovery motion practice before the magistrate judge and drafted a motion for summary judgment. Following the denial of summary judgment, I successfully settled this case on behalf of Plaintiff.

Counsel for Defendant:

Suzanne M. Cerra, Esq.
Nukk-Freeman & Cerra
636 Morris Turnpike, Suite 2F
Short Hills, New Jersey 07078
Tel: 973-564-9100

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a magistrate judge, in January 2013, I began the first reentry court for the District of New Jersey, together with a team of Assistant United States Attorneys, Public Defenders, Probation Officers and various community outreach professionals. In exchange for voluntary enhanced supervision and a reduced probationary term, we provide, in a collaborative effort, extra services, support and guidance to our participants, as well as sanctions when needed. We will be graduating our first class in July 2014.

I have not performed any lobbying activities on behalf of any clients or organizations.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

From 1990 to 1994, I served as an Adjunct Instructor of Legal Writing and Research at Seton Hall University School of Law. This was an introductory level course taken by all first-year law students and taught by adjuncts, such as myself, once a week. It involved fundamental principles of legal writing and research. I have no syllabus for the course.

- 20. Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

- 21. Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any plans, commitments or agreements to pursue outside employment with or without compensation if I am confirmed to be a United States District Judge.

- 22. Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

- 23. Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

- 24. Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My husband is a partner at the law firm of Arleo & Donohue, LLC in West Orange, NJ. As a magistrate judge, I presently recuse myself in any cases in which my husband or any attorneys at his firm are counsel; in any case in which my husband or I has a financial interest; and in any case where I have a significantly close relationship with counsel, parties or witnesses (family, business or social). I would continue to so recuse myself were I confirmed as a district court judge.

- b. Explain how you will resolve any potential conflict of interest, including the

procedure you will follow in determining these areas of concern.

If confirmed as a district court judge, I would continue to resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455, and all applicable policies and procedures of the United States Courts. I would recuse myself in any matter in which my spouse or lawyers at his firm are counsel; where myself or my husband hold a financial interest or where I have a sufficiently close connection with counsel or the parties (family, business or social). In the event of uncertainty, I would err on the side of disqualification.

- 25. Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a magistrate judge, I am not permitted to represent clients, pro bono or otherwise. However, I am a regular contributor to various continuing legal education organizations and participate in educational seminars sponsored by local bar associations and law schools.

As a practicing attorney, in approximately 1992, I handled pro bono criminal cases to help reduce the backlog in the Essex County Criminal Courts. In addition, I served as the Secretary to the District V-A Ethics Committee from 1994 to 1997.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In March 2014, I submitted my resume to Senator Menendez for consideration for the district court. On April 22, 2014, I interviewed with Senator Menendez and members of his staff in Newark, New Jersey. On or about May 6, 2014, Senator Menendez advised me that he would be recommending me to the President. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 28, 2014, I interviewed with Senator Booker in Newark, New Jersey. On June 20, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 26, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Arleo, Madeline C.	2. Court or Organization U.S. District Court, Newark	3. Date of Report 06/26/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 06/26/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 06/26/2014
7. Chambers or Office Address United States District Court 50 Walnut Street Newark, NJ 07101		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. _____	_____
2. _____	_____
3. _____	_____

FINANCIAL DISCLOSURE REPORT
 Page 2 of 8

Name of Person Reporting	Date of Report
Arleo, Madeline C.	06/26/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☒ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME <i>(yours, not spouse's)</i>
1.			
2.			
3.			
4.			

B. Spouse's Non-Investment Income *- If you were married during any portion of the reporting year, complete this section.
(Dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1. 2013		Arleo, Donohue & Biancamano, LLC (law firm; partnership income)
2. 2014		Arleo & Donohue, LLC (law firm; partnership income)
3.		
4.		

IV. REIMBURSEMENTS *-- transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children: see pp. 25-27 of filing instructions.)
☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

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FINANCIAL DISCLOSURE REPORT
Page 3 of 8

Name of Person Reporting	Date of Report
Arlen, Madeline C.	06/26/2014

V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

☐ NONE (No reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

☒ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
 Page 4 of 8

Name of Person Reporting	Date of Report
Arleo, Madeline C.	06/26/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm dd yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. American Gen. Annuity-Amarillo, TX	A	Interest	J	T	Exempt				
2. Fidelity Contrafund	A	Dividend	L	T					
3. Fidelity Growth Fund	A	Dividend	K	T					
4. Fidelity Puritan	A	Dividend	K	T					
5. Fidelity Blue Chip Growth	A	Dividend	K	T					
6. Eli Lilly	A	Dividend	J	T					
7. JDS Uniphase		None	J	T					
8. Schwab Money Market Fund	A	Dividend	L	T					
9. American Century Ultra Fund	A	Dividend	J	T					
10. Harbor Cap. App. (HACAX)	A	Dividend	L	T					
11. Janus Fund (JANSX)	A	Dividend	K	T					
12. Vanguard 500 Index FD	A	Dividend	L	T					
13. Transam. Stable Value Op. Money Market	D	Dividend	N	T					
14. Vanguard Target Retirement 2035		None	M	T					
15. Vanguard Target Retirement 2025		None	M	T					
16. Intel	A	Dividend	J	T					
17. Janus Growth Inc.	A	Dividend							

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,001 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 I = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Arleo, Madeline C.	06/26/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Wells Fargo Adv Growth (previously Strong Growth)	A	Dividend	K	T					
19. Schwab Money Market	B	Interest	K	T					
20. Hologic (Hols)		None	J	T					
21. Schwab Market Growth	A	Dividend	J	T					
22. Schwab Money Market Fund	A	Dividend	K	T					
23. UESP -- Age-Based Conservative	B	Dividend	M	T					
24. UESP -- Age-Based Moderate	B	Dividend	M	T					
25. Nuveen NJ Municipal Bond Fund	A	Dividend	J	T					
26. PNC Bank (account)	A	Interest	J	T					
27. U.S. Savings Bonds Series EE	A	Interest	J	T					
28. Provident Bank (accounts)	A	Interest	K	T					
29. G.S. Comm. Bank (accounts)	A	Interest	M	T					
30. Loomis Sayles Bond Ret. Option		None	J	T					
31. TransAm. Asset Allocation Growth Fund	A	Interest	K	T					
32. TransAm. Partners Core Bond Ret. Option		None	K	T					
33. Vanguard Total Stock Market Index Fund	A	Interest	L	T					
34. TransAm Partner Midvalue Ret. Option	A	Interest	L	T					

1. Income Gain Codes (See Columns B1 and D4)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,001 or less N - \$250,001 - \$500,000 P1 - \$25,000,001 - \$50,000,000	B - \$1,001 - \$2,500 G - \$100,001 - \$100,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000 R - Cost (Real Estate Only) V - Other	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000 I - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000 S - Associate W - Estimated	D - \$5,001 - \$15,000 J2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 T - Cash Market	E - \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q - Appraisal U - Book Value				

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Arleo, Madeline C.	06/26/2014

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount	Type (e.g.,	Value	Value	Type (e.g.,	Date	Value	Gain	Identity of
	Code 1 (A-I)	div., rent, or int.)	Code 2 (J-P)	Method Code 3 (Q-W)	buy, sell, redemption)	month/day	Code 2 (J-P)	Code 1 (A-I)	buyer/seller (if private transaction)
35. Morgan Stanley Growth Opp Ret. Option	A	Interest	L	T					
36. Am. Funds Wash. Mutual Inv.	A	Interest	K	T					
37. Wells Fargo Adv. Small Cap.	A	Interest	K	T					

1 Income/Gain Codes (See Columns D1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,001 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 I = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 S = Accretion W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2 Value Codes (See Columns C1 and C3)					
3 Value Method Codes (See Column C2)	Q = Approval U = Book Value				

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FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Arleo, Madeline C.	06/26/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

Page 8 of 8

Name of Person Reporting	Date of Report
Arleo, Madeline C.	06/26/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: *s/ Madeline C. Arleo*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		239	101	Notes payable to banks-secured			
U.S. Government securities-Series EE bonds		9	700	Notes payable to banks-unsecured			
Listed securities - see schedule	1	494	919	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		8	652
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		353	939
Real estate owned -see schedule	1	450	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		45	000				
Cash value-life insurance		8	800				
Other assets itemize:							
Thrift Savings Plan		356	661				
American General Annuity		11	953				
				Total liabilities		362	591
				Net Worth	3	253	543
Total Assets	3	616	134	Total liabilities and net worth	3	616	134
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>Listed Securities</u>	
American Century Ultra Fund	\$ 23,782
American Funds Washington Mutual Investors Fund	23,169
Eli Lilly and Co. stock	5,919
Fidelity Blue Chip Growth Fund	46,641
Fidelity Contrafund	67,951
Fidelity Growth Company Fund	22,479
Fidelity Puritan Fund	48,840
Harbor Capital Appreciation Fund	52,201
Hologic stock	15,537
Intel stock	3,001
Janus Fund	26,052
JDS Uniphase stock	140
Loomis Sayles Bond Retail Fund	11,939
Lucent Technologies stock	326
Nuveen New Jersey Municipal Bond Fund	4,976
Schwab MarketTrack Growth Portfolio	13,233
Schwab Money Market Fund	7,597
Transamerica Asset Allocation Growth Portfolio Fund	44,468
Transamerica Morgan Stanley Growth Opportunities Fund	53,799
Transamerica Partners Core Bond Fund	25,263
Transamerica Partners Institutional Mid Value Fund	82,141
Transamerica Stable Value Advantage Option	259,125
Utah Educational Savings Plan Age-Based Conservative	127,559
Utah Educational Savings Plan Age-Based Moderate	145,648
Vanguard 500 Index Fund	52,992
Vanguard Target Retirement 2025 Fund	104,674
Vanguard Target Retirement 2035 Fund	112,221
Vanguard Total Stock Market Index Fund	51,107
Wells Fargo Advantage Growth Fund	16,728
Wells Fargo Advantage Small Cap Value Fund	44,511
Total Listed Securities	<u>\$ 1,494,019</u>
<u>Real Estate Owned</u>	
Personal residence	\$ 850,000
Vacation home #1	560,000
Vacation home #2	40,000
Total Real Estate Owned	<u>\$ 1,450,000</u>

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AFFIDAVIT

I, Madeline Cox Arico, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

June 26, 2014
(DATE)

Madeline Cox Arico
(NAME)

Amanda D. Laufer
(NOTARY)
Amanda D. Laufer, Esq.
Attorney-at-law
State of NJ
Attorney id: 902142012

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Victor Allen Bolden

2. **Position**: State the position for which you have been nominated.

United States District Judge for the District of Connecticut

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office of the Corporation Counsel
City of New Haven
165 Church Street, 4th Floor
New Haven, Connecticut 06510

4. **Birthplace**: State year and place of birth.

1965; New York, New York

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1986 – 1989, Harvard Law School; J.D., 1989

1982 – 1986, Columbia College, Columbia University; A.B., 1986

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2009 – present
Office of the Corporation Counsel
City of New Haven
165 Church Street, 4th Floor

New Haven, Connecticut 06510
Corporation Counsel (2009 – present)
Acting Corporation Counsel (January – April 2009)

2005 – 2009
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, New York 10006
General Counsel

2000 – 2005
Wiggin & Dana
One Century Tower
265 Church Street
P.O. Box 1832
New Haven, Connecticut 06508
Counsel (2004 – 2005)
Associate (2000 – 2003)

1994 – 2000
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, New York 10006
Assistant Counsel

1989 – 1994
American Civil Liberties Union Foundation
125 Broad Street
New York, New York 10004
Staff Attorney (1990 – 1994)
Marvin Karparkin Fellow (1989 – 1990)

Summer 1988
Cook County Law Office of Public Defender
69 West Washington, Suite 1600
Chicago, Illinois 60602
Summer Intern

Summer 1987
Harlem Legal Services
55 West 125th Street, #1001
New York, New York 10027
Summer Intern

Summer 1986
Double Discovery Center

Columbia College
Columbia University
Upward Bound Program
Alfred Lerner Hall, Room 306
2920 Broadway, MC 2604
New York, New York 10027
Summer Counselor

Other affiliations (uncompensated):

2013 – present
Church of the Redeemer
185 Cold Spring Street
New Haven, Connecticut 06511
Leadership Council

2011 – present
Connecticut Veterans Legal Center
114 Orange Avenue, 2nd Floor
West Haven, Connecticut 06516
Board of Directors

2010 – present
New Haven County Bar Association
171 Orange Street, Suite 2
New Haven, Connecticut 06510
Treasurer (2013 – present)
Secretary (2012 – 2013)
Assistant Treasurer (2004 – 2005, 2011 – 2012)
Assistant Secretary (2003 – 2004, 2010 – 2011)

2000 – 2010
National Coalition Against Censorship
19 Fulton Street, Suite 407
New York, New York 10038
Board Member

2007 – 2009
Poverty & Race Research Action Council
1200 18th Street, N.W., #200
Washington, D.C. 20036
Board Member

2003 – 2005
International Center of New Haven
421 Temple Street
New Haven, Connecticut 06511

Board Chair (2004 – 2005)
Board Member (2003 – 2005)

2001 – 2005
Connecticut Food Bank
150 Bradley Street
East Haven, Connecticut 06512
Board Member

1996 – 2001
National Voting Rights Institute
358 Chestnut Hill Avenue, #303
Brighton, Massachusetts 02135
Board of Advisors

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Connecticut Law Tribune's Lawyers of Color: High Achievers (2011)

Wasserstein Fellow, Wasserstein Fellowship Public Interest Program (fellows return to Harvard Law School's campus to counsel law students interested in public interest careers) (1995 – 1996)

Marvin Karparkin Fellowship (one-year attorney position with the American Civil Liberties Union's National Legal Department) (1989 – 1990)

Irving Oberman Memorial Award (best paper on a current legal subject at Harvard Law School) (1989)

Columbia College, Columbia University, Leonard A. Pullman Memorial Prize (to senior for scholarship and service to Columbia College) (1986)

Columbia College, Columbia University, Milch Prize (to junior who has done the most to enhance the reputation of Columbia College) (1985)

Columbia College, Columbia University, John T. Lewis Scholarship (1985)

Columbia College, Columbia University, Brod Room Prize (1985)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Standing Committee on Amicus Curiae Briefs (2012 – present)
 Section of Litigation, Division III, Professional Development and Programs (2013 – present)
 Co-Director
 Section of Litigation, Amicus Curiae Committee (2010 – 2012)
 Co-Chair
 Section of Litigation, Appellate Practice Committee (2008 – 2009)
 Co-Chair
 Section of Litigation, Communications Committee (2012 – present)
 Section of Litigation, Content Management Committee (2009 – 2010)
 Section of Litigation, Federal Practice Task Force (2002 – 2005)
 Section of Litigation, Trial Practice Committee (2005 – 2008)
 Co-Chair
 Section of Litigation, Trial Practice Committee, Ethics Sub-Committee (2004 – 2005)
 Co-Chair

Association of the Bar of the City of New York

Benchers

Connecticut Bar Association

Connecticut Judicial Branch

Civil Commission (2011 – present)
 Superior Court Rules Committee, Task Force To Study Minimum Continuing Legal Education (2012 – 2013)

Connecticut Law Tribune

Editorial Board (2012 – present)

National Association of College and University Attorneys (2003)

Legal Education Committee (2003)

New Haven County Bar Association

Treasurer (2013 – present)
 Executive Committee, (2002 – 2005 and 2010 – present)
 Secretary (2012 – 2013)
 Assistant Secretary (2011 – 2012)

Assistant Treasurer (2004 – 2005 and 2010 – 2011)
Bench-Bar Relations Committee, Chair (2002 – 2005)

New Haven Inn of Court

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York, 1990
Connecticut, 2000

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Supreme Court, 1997

United States Court of Appeals for the Second Circuit, 2005

United States Court of Appeals for the Fifth Circuit, 1998

United States Court of Appeals for the Tenth Circuit, 1994

United States Court of Appeals for the Eleventh Circuit, 1995

United States District Court for the District of Connecticut, 2001

United States District Court for the Southern District of New York, 1991

United States District Court for the Eastern District of New York, 2002

United States District Court for the Western District of New York, 2000

United States District Court for the Eastern District of Michigan, 1992

United States District Court for the Eastern District of Wisconsin, 1992

I did not renew my membership dues in the Second Circuit between March 21, 2010 and November 6, 2013. I also have not renewed my membership dues in the Eleventh Circuit since December 22, 2010. Otherwise, there have been no lapses.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

American Civil Liberties Union Marvin Karparkin Fellowship Selection
Committee (2009 – present)

Columbia University (1988 – 1993)
Alumni Interviewer

Connecticut Food Bank (2001 – 2005)
Board Member

Connecticut Veterans Legal Center (2011 – present)
Board Member

Church of the Redeemer (1999 – present)
Leadership Council (2013 – present)
Youth Advisor (2013 – present)
Confirmation Class Teacher (2008 – present)
Sunday School Teacher (2003 – 2012)
Missions Committee member (2000 – 2005)
Associate Member (1999 – Present)

International Center of New Haven (2003 – 2005)
Board Chair (2004 – 2005)
Board Member (2003 – 2005)

National Coalition Against Censorship (2000 – 2010)
Board Member

National Education Leaders Consortium (2005)

National Voting Rights Institute (1996 – 2001)
Board of Advisors

New York City Lawyers in the Classroom (1990 – 1992)

Poverty & Race Research Action Council (2007 – 2009)
Board Member

Riverside Church (1991 – 1997)

Mission and Social Justice Commission, Member and Co-Chair
Conference on Pluralism in Religious Communities, National Planning
Committee Co-Chair

Science and Technology Exploration Program (1990 – 1991)

Mentor

Twenty-Fifth Ward Democratic Town Committee (2002 – present)

Wiggin and Dana Diversity Advisory Board (2008 – 2013)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

As a member of the editorial board of the Connecticut Law Tribune, I have written the following editorials, which were adopted and published by the Board:

When Reproductive Rights Still Meant a Criminal Prosecution,
Connecticut Law Tribune, January 22, 2014. Copy supplied.

Nelson Mandela and the Power of the Law, Connecticut Law Tribune,
December 11, 2013. Copy supplied.

And We Are Not Done Yet, Connecticut Law Tribune, July 29, 2013. Copy
supplied.

The Poetic License, Connecticut Law Tribune, January 28, 2013. Copy
supplied.

Welcome to the Bar (Soon), Connecticut Law Tribune, May 20, 2013. Copy supplied.

We the People, Connecticut Law Tribune, November 26, 2012. Copy supplied.

In Remembrance of Judge Mark R. Kravitz, Connecticut Law Tribune, October 19, 2012. Copy supplied.

Why Not A Professional Development Day, Connecticut Law Tribune, June 11, 2012. Copy supplied.

Debating Jealous, Letter to the Editor, re article on Benjamin Jealous, Columbia Magazine, Fall 2013. Copy supplied.

Ricci v. DeStefano: The Case For the City, New Haven Register, May 3, 2009. Copy supplied.

Online Post, in response to *City Won't Pay Cops' Legal Bills*, New Haven Independent, February 18, 2009. Copy supplied.

The Oneness of Twoness: The Promise and Challenge of Racial Equality, Joint Center for Political and Economic Studies, Focus Magazine, May/June 2008. Copy supplied.

Changing the Deposition Testimony of a Witness, ABA Section of Litigation, Pretrial Practice & Discovery Newsletter, Spring 2005. Copy supplied.

Developments in the Second Circuit: 2002 – 2003, 36 Connecticut Law Review 1187 (2004) (co-author of article /author of constitutional and civil rights law section). Copy supplied.

Survey of Connecticut Privacy and Related Claims Against the Media, 50-State Survey Media Privacy and Related Law 2004 – 2005, Media Law Resource Center, Inc., (2004) (co-author). Copy supplied.

Survey of Connecticut Privacy and Related Claims Against the Media, 50-State Survey Media Privacy and Related Law 2003 – 2004, Media Law Resource Center, Inc., (2003) (co-author). Copy supplied.

Libel Defense Resource Center, Inc. Media Letter, Connecticut Court Issues Media-Friendly Decisions on Fair Report Privilege and Retraction Statute, (2002) (co-author). Copy supplied.

Affirmative Action in Court: The Case for Optimism, Equity & Excellence in

Education, vol. 32, no. 2, pp. 24-30 (1999) (co-author). Copy supplied.

Where Does New York City Go From Here: Chaos or Community?, 23 Fordham Urban Law Journal 1031 (1996). Copy supplied.

The Question Is Whether Court Values Equality Goals – And If So, How Much,?” Civil Liberties, Spring 1990. Copy supplied.

Judge Not That Ye Be Not Judged: A Dramatic Call for a More Enlightened Approach to Judicial Decision-Making in Race Discrimination Cases, 7 Harvard Blackletter Journal 33 (1990). Copy supplied.

Salvaging Black Males, in *Racial Reflections: Dialogues in the Direction of Liberation*, 37 UCLA L. Rev. 1037 (1989-1990). Copy supplied.

CU Badly Needs Change, Columbia Daily Spectator, April 23, 1985. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

After searching my records and the Internet, I have compiled the following list, although it is possible that I may have missed one.

Transition Report, Office of the Corporation Counsel, November 2013.
Transition memo and report available at
<http://cityofnewhaven.com/Mayor/pdfs/Without%20Contacts/Section%201%20of%20Transition%20docs.pdf> and
<http://cityofnewhaven.com/Mayor/pdfs/Corporation%20Counsel%20Attachments/Section%202%20of%20Transition%20docs.pdf>.

2013 Proposed Revision of the Charter of the City of New Haven, New Haven Charter Revision Commission, November 5, 2013. As Corporation Counsel for the City of New Haven, I approved the accuracy of the explanatory language about the proposed Charter disseminated to voters under the statute although I was not involved in drafting these proposed revisions or explanatory language. Copy supplied.

State of Connecticut Judicial Branch, Report of the Rules Committee Task Force to Study Minimum Continuing Legal Education, January 25, 2013. Copy supplied.

American Bar Association Section of Litigation *Amicus Curiae* Committee, Progress Report, June 8, 2012. Copy supplied.

New Haven County Bar Association Correspondence to State of Connecticut Judicial Branch's Rules Committee, regarding minimum continuing legal education, February 21, 2012. Copy supplied.

New Haven County Bar Association Correspondence to State of Connecticut Judicial Branch's Rules Committee, regarding minimum continuing legal education, January 11, 2012 (substantive comments reflected in November 11, 2011 report). Copy supplied.

American Bar Association Section of Litigation *Amicus Curiae* Committee, Annual Plan, 2011-2012. Copy supplied.

American Bar Association Section of Litigation *Amicus Curiae* Committee, Progress Report, December 16, 2011. Copy supplied.

New Haven County Bar Association MCLE 2011 Task Force Report to the New Haven County Bar Association's Executive Committee, November 11, 2011. Copy supplied.

American Bar Association Section of Litigation *Amicus Curiae* Committee, Progress Report, May 2011. Copy supplied.

American Bar Association Section of Litigation *Amicus Curiae* Committee, Annual Plan, September 2010. Copy supplied.

NAACP Legal Defense & Educational Fund, Inc., *No Chance To Make It Right*, April 1, 2008. Copy supplied.

Message from the Chairs, American Bar Association Section of Litigation Trial Practice Committee, Trial Practice Journal, Winter/Spring 2007. Copy supplied.

National Education Leaders Consortium, *With All Deliberate Speed: Achievement, Citizenship and Diversity in American Education*, November 2005. Copy supplied.

NAACP Legal Defense & Educational Fund, Inc., *Closing the Gap: Moving From Rhetoric to Reality In Opening Doors to Higher Education for African American Students*, June 23, 2005. Copy supplied.

Faculty, Staff and Student Leaders, Columbia Speaks Out Against Star Wars, Columbia Daily Spectator, May 14, 1986. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

November 19, 2013: Report, Office of the Corporation Counsel of the City of New Haven, A Review of Race and Discipline in the New Haven Department of Fire Services. Copy supplied.

February 21, 2013: Testimony, City of New Haven Charter Revision Commission, New Haven, Connecticut. PowerPoint provided.

December 13, 2012: Testimony, State of Connecticut Judicial Branch Rules Committee Task Force to Study Minimum Continuing Legal Education meeting. Meeting minutes supplied.

December 3, 2012: Comment, State of Connecticut Judicial Branch Civil Commission meeting, regarding proposed discovery rule changes for Connecticut's Rules of Civil Procedure. Meeting minutes supplied.

November 1, 2012: Testimony, State of Connecticut Judicial Branch Rules Committee Task Force to Study Minimum Continuing Legal Education meeting. Meeting minutes supplied.

February 27, 2012: Testimony before the State of Connecticut Judicial Branch Rules Committee, regarding minimum continuing legal education. Minutes and testimony supplied.

December 4, 2009: Statement regarding promotions from 2003 Fire Department examinations before the New Haven Board of Fire Commissioners. Remarks supplied.

April 30, 1988: Testimony, Cambridge Massachusetts Human Rights Commission, regarding the Cambridge Police Department. Cambridge, Massachusetts. I have no notes, transcript or recording.

Corporation Counsel Opinions:

The Corporation Counsel of the City of New Haven and staff occasionally are asked to provide formal legal opinions on various matters. After searching my records and the Internet, I have compiled the following opinions, although it is possible that I may have missed one.

Opinion of the Corporation Counsel of the City of New Haven, regarding The State of Connecticut Freedom of Information Act, Executive Session and Subpoenas, dated February 3, 2014. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding Commercial Property Assessed Clean Energy Program ("C-PACE") and Foreclosures, dated October 16, 2013. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the meaning of Article XI, Section 58(c) of the Charter, dated October 3, 2013. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding proposed amendment to by-laws regarding removal of executive board members of the Civilian Review Board, dated June 3, 2013. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding abandonment of public streets, dated May 31, 2013. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding Maurice Holness. H & H Residential, LLC Fair Rent Commission Case No. 1039-12, dated May 14, 2013. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the removal of Assistant Chiefs in the Police Department, dated December 21, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding Office of Legislative Services' notices for the sale, lease or transfer of municipal property, dated December 6, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding voluntary demotions in the Fire Department, dated November 15, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding amendments to redistricting plan, dated October 22, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding motor vehicle tax credits and tax abatement rules and motor vehicle taxes, dated August 31, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding proposed tax agreement for the 360 State Street property, dated August 17, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding definition of terms "public building" and "public work," dated May 10, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the appointment of a municipal historian, dated March 30, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the law and municipal public contracting programs, dated February 8, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding Board of Aldermen appointments and the minority party representation law, dated January 17, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding applicability of Connecticut General Statutes Section 9-167a to the Civilian Review Board, dated January 12, 2012. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding use of state highways by vendors, dated November 23, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding 423 Dixwell Avenue/CDBG Grant Assistance and a conflict of interest, dated November 7, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the municipal towing list, dated October 21, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the definition of a public official, dated August 8, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding insurance requirements for municipal towers in New Haven, dated August 8, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding school nurse assignment, dated June 6, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding non-emergency interagency agreement between the City of New Haven and the Town of Hamden, dated June 6, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding taxability of Yale University, dated June 1, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the legality of a proposed transaction, dated May 3, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding fuel surcharge by municipal towers in New Haven, dated April 29, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding bottled water in the New Haven public schools, dated March 15, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the appointments to the Board of Assessment Appeals, dated March 11, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding amendment process for city ordinances, dated January 31, 2011. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the effect of an action in Superior Court on the Fair Rent Commission's Jurisdiction in the same matter, dated December 23, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding City Charter residency requirements, dated December 20, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding tax refunds for Ryder trucks, dated October 20, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the HomeWork program, dated October 13, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding taxation of the Tennis Center property, dated October 7, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the time of service on City Boards, dated September 24, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the tax abatement rules of the New Haven Board of Aldermen, dated September 22, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding Connecticut General Statutes Section 14-290, dated July 26, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding New Haven Code of Ordinances Section 28-19, dated June 30, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding juice bars, dated May 26, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding moratorium on property tax foreclosures, dated May 11, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding proposed nominees for the 2010 Charter Revision Commission, dated April 19, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the process for appointing the Director of Public Health, dated January 11, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding a property tax exemption deadline, dated November 24, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the redistricting process for the wards of the Board of Aldermen, dated October 19, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the Charter revision process, dated October 19, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the applicability of Section 180 of the Charter of the City of New Haven to a cooperation agreement between the City of New Haven, the Housing Authority of the City of New Haven and Trinity Rowe Limited Partnership, dated October 14, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding capital budget amendments, dated September 17, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding agreement by and between the New Haven Board of Education and Southern Connecticut State University for Connecticut Collegiate Awareness and Preparation Program (CONNCAP), dated July 24, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the library endowment fund, dated June 9, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the Grand Avenue Special Service District Ordinance, dated March 24, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of New Haven, regarding the Litigation Settlement Committee, dated February 3, 2009. Copy supplied.

Corporation Counsel Appearances for Government Clients:

As Corporation Counsel of the City of New Haven, I appear before committees of the City of New Haven's Board of Alders, as well as other City of New Haven Boards, Commissions and Committees, to provide public testimony, confidential legal advice or both. After searching my records and the Internet, I have compiled the following public appearances, although it is possible that I may have missed one.

As Corporation Counsel of the City of New Haven, on a bi-weekly basis, I or someone from my staff attends meetings of the City's Litigation Settlement Committee, which must approve of the resolution of court cases above a certain monetary amount. After searching records and the Internet, I appeared at the following meetings: June 4, 2014, May 7, 2014, April 23, 2014, April 9, 2014, March 26, 2014, March 12, 2014, February 26, 2014, February 12, 2014, January 15, 2014, December 18, 2013, December 4, 2013, November 6, 2013, October 23, 2013, September 24, 2013, September 11, 2013, August 14, 2013, July 31, 2013, July 17, 2013, July 2, 2013, June 5, 2013, May 22, 2013, April 10, 2013, March 27, 2013, March 13, 2013, February 27, 2013, January 30, 2013, January 2, 2013, December 5, 2012, November 20, 2012, November 7, 2012, October 24, 2012, October 10, 2012, July 18, 2012, June 6, 2012, May 18, 2012, May 9, 2012, March 14, 2012, February 29, 2012, February 15, 2012, November 22, 2011, September 28, 2011, September 14, 2011, August 3, 2011, July 20, 2011, June 22, 2011, May 25, 2011, April 27, 2011, March 2, 2011, February 16, 2011, February 2, 2011, December 22, 2010, September 8, 2010, August 11, 2010, July 14, 2010, June 30, 2010, May 6, 2010, April 21, 2010, March 10, 2010, February 24, 2010, February 22, 2010, January 27, 2010, December 2, 2009, November 18, 2009, July 29, 2009, July 22, 2009, July 1, 2009, May 20, 2009, May 6, 2009, February 25, 2009, and January 28, 2009. Minutes available at <http://www.cityofnewhaven.com/Government/Litigation.asp>.

Appearance, Board of Fire Commissioners of the City of New Haven, regarding disciplinary matter on June 2, 2014. Meeting minutes supplied.

Appearance, Board of Fire Commissioners of the City of New Haven, regarding disciplinary matter on May 16, 2014. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding education funding on May 12, 2014. Meeting minutes supplied.

Appearance, Board of Police Commissioners of the City of New Haven, regarding pending litigation on May 7, 2014. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding department budget on March 20, 2014. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding additional funding for outside legal counsel on March 12, 2014. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding additional funding for outside legal counsel on February 12, 2014. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding increase in funding for legal services on December 11, 2013. Meeting minutes supplied.

Testimony, Joint Tax Abatement/Aldermanic Affairs Committee, Board of Alders of the City of New Haven, regarding low-income, affordable and supportive housing working group on October 17, 2013. Meeting minutes supplied.

Testimony, City of New Haven Board of Health Commissioners, regarding Connecticut's Freedom of Information Act on October 9, 2013. Meeting minutes supplied.

Testimony, City Services and Environmental Policy Committee, Board of Alders of the City of New Haven, regarding proposed agreement between the City of New Haven and the Connecticut Clean Energy Finance and Investment Authority for participation in the Commercial Property Assessed Clean Energy program on September 19, 2013. Meeting minutes supplied.

Appearance, Board of Fire Commissioners of the City of New Haven, regarding hiring matter on August 29, 2013. Meeting minutes supplied.

Appearance, Board of Fire Commissioners of the City of New Haven, regarding department disciplinary matter on June 21, 2013. Meeting minutes supplied.

Testimony, Committee on the Whole, Board of Alders of the City of New Haven, regarding proposed revisions to the Charter on June 17, 2013. I have no notes, transcript or recording.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding an increase in funding for legal services on June 12, 2013. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding an increase in funding for legal services on May 8, 2013. Meeting minutes supplied.

Testimony, Legislation Committee, Board of Alders of the City of New Haven, regarding proposed zoning ordinance amendments on April 11, 2013. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding department budget request on April 4, 2013. Meeting minutes supplied.

Testimony, Charter Revision Commission of the City of New Haven, regarding proposed revisions to the Charter on March 21, 2013. Audio recording supplied.

Testimony, Board of Ethics of the City of New Haven, regarding hire of position in the Office of Legislative Services on February 28, 2013. Draft meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding department budget request on April 3, 2012. Meeting minutes supplied.

Testimony, Committee on the Whole, Board of Alders of the City of New Haven, regarding redistricting process on March 29, 2012. Audio recording supplied

Testimony, Committee on the Whole, Board of Alders of the City of New Haven, regarding proposed stormwater authority on March 17, 2012. Audio recording supplied.

Appearance, Board of Police Commissioners of the City of New Haven, regarding department hiring on February 7, 2012. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding ordinance amendment adopting Executive Management and Confidential Employees Personnel and Procedure Manual on November 30, 2011. Meeting minutes supplied.

Testimony, City Services and Environmental Policy Committee, Board of Alders of the City of New Haven, regarding residency requirements for firefighter applicants on November 15, 2011. Meeting minutes supplied.

Testimony, Legislation Committee, Board of Alders of the City of New Haven, regarding minority business contracting programs on November 14, 2011. Meeting minutes supplied.

Testimony, Public Caucus, Board of Alders of the City of New Haven, regarding contract for copying services on November 10, 2011. I have no notes, transcript or recording.

Testimony, Legislation Committee, Board of Alders of the City of New Haven, regarding garage keepers' liability coverage on August 8, 2011. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding ordinance amendment adopting Executive Management and Confidential Employees Personnel and Procedure Manual on July 28, 2011. Meeting minutes supplied.

Testimony, Joint Legislation-Tax Abatement Committee, Board of Alders of the City of New Haven, regarding tax abatement legislation on July 14, 2011. Meeting minutes supplied.

Testimony, Public Safety Committee, Board of Alders of the City of New Haven, regarding public cameras on June 1, 2011. I have no notes, transcript or recording.

Testimony, City Services and Environmental Policy Committee, Board of Alders of the City of New Haven, regarding the closure of certain city streets on April 28, 2011. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding department budget request on March 31, 2011. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding an increase in funding for legal services on March 24, 2011. Meeting minutes supplied.

Testimony, Legislation Committee, Board of Alders of the City of New Haven, regarding an ordinance amendment increasing the size of the Board of Assessment Appeals on March 14, 2011. Meeting minutes supplied.

Testimony, Commission on Disabilities of the City of New Haven, regarding recent changes in the Office of Disability Services on March 14, 2011. Meeting minutes supplied.

Testimony, Tax Abatement Committee, Board of Alders of the City of New Haven, regarding Board of Assessment Appeals on September 14, 2010. Meeting minutes supplied.

Testimony, Joint Finance-Legislation Committee, Board of Alders of the City of New Haven, regarding a proposed living wage ordinance on August 31, 2010. Meeting minutes supplied.

Testimony, Tax Abatement Committee, Board of Alders of the City of New

Haven, regarding an elderly tax freeze and other tax matters on July 26, 2010. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding First Amendment issues related to a proposed ordinance amendment on June 23, 2010. Meeting minutes supplied.

Appearance, Civil Service Board of the City of New Haven, regarding civil service rules and pending litigation and administrative agency matters on June 23, 2010. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding municipal towing on June 3, 2010. Meeting minutes supplied.

Testimony, Tax Abatement Committee, Board of Alders of the City of New Haven, regarding Ryder Truck rental and other tax issues on May 11, 2010. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding an ordinance amendment establishing a property tax stabilization trust fund on May 5, 2010. Meeting minutes supplied.

Testimony, Aldermanic Affairs Committee, Board of Alders of the City of New Haven, regarding the appointment process for a local redevelopment agency on April 27, 2010. Meeting minutes supplied.

Testimony, Tax Abatement Committee, Board of Alders of the City of New Haven, regarding tax foreclosures on April 26, 2010. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding department budget request on March 24, 2010. Meeting minutes supplied.

Appearance, Civil Service Board of the City of New Haven, regarding civil service rules and candidate eligibility for pending civil service test on March 22, 2010. Meeting minutes supplied.

Testimony, Tax Abatement Committee, Board of Alders of the City of New Haven, regarding a tax abatement agreement on March 9, 2010. Meeting minutes supplied.

Testimony, Aldermanic Affairs Committee, Board of Alders of the City of New Haven, regarding the appointment process for a local redevelopment agency on February 22, 2010. Meeting minutes supplied.

Testimony, Legislation Committee, Board of Alders of the City of New Haven,

regarding a zoning ordinance amendment related to the proposed new Yale School of Management building on February 11, 2010. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding an increase in funding for legal services on December 3, 2009. Meeting minutes supplied.

Appearance, Civil Service Board of the City of New Haven, regarding certification of civil service eligibility lists from the *Ricci* litigation on November 30, 2009. Meeting minutes supplied.

Testimony, Legislation Committee, Board of Alders of the City of New Haven, regarding code of ordinance amendment related to the disqualification of contractors on November 9, 2009. Meeting minutes supplied.

Appearance, Civil Service Board of the City of New Haven, regarding pending litigation matters on September 29, 2009. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding an increase in funding for legal services on August 12, 2009. Meeting minutes supplied.

Testimony, Legislation Committee, Board of Alders of the City of New Haven, regarding an ordinance amendment related to anti-blight and property maintenance on August 10, 2009. Meeting minutes supplied.

Appearance, Civil Service Board of the City of New Haven, regarding certification of civil service eligibility test on July 14, 2009. Meeting minutes supplied.

Testimony, Public Safety Committee, Board of Alders of the City of New Haven, regarding an alarm ordinance on July 8, 2009. Audio recording supplied.

Testimony, City Services and Environmental Policy Committee, Board of Alders of the City of New Haven, regarding personnel reductions on May 21, 2009. Meeting minutes supplied.

Testimony, Civil Service Board of the City of New Haven, regarding pending litigation matter on March 31, 2009. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven, regarding Tweed-New Haven Airport on March 11, 2009. Meeting minutes supplied.

Testimony, Finance Committee, Board of Alders of the City of New Haven,

regarding an increase in funding for legal services on January 26, 2009. Meeting minutes supplied.

Corporation Counsel Correspondence:

Correspondence, Alder Michael Stratton, re the City of New Haven budgetary process, March 31, 2014. Copy supplied.

Correspondence, Brian Soucek, re proposed amendments to the City of New Haven park ordinances, November 19, 2013. Copy supplied.

Correspondence/legislative submission, re proposed amendments to the City of New Haven park ordinances, November 4, 2013. Copy supplied.

Correspondence, Herbert Shepardson, Esq., regarding ballot litigation, November 1, 2012. Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list reflects my best effort to identify the public speeches, talks and remarks that I have delivered. In compiling this list, I have reviewed my own files and undertaken Internet research. There may be, however, speeches, talks or remarks that I have been unable to locate or do not recall having made. On occasion, I have spoken at events for which I did not retain any record.

January 17, 2014: Panelist, *Amicus Curiae* Briefs program, American Bar Association, Section of Litigation, Winter Leadership Meeting, San Diego, California. PowerPoint supplied.

November 7, 2013: Panelist, Gospel of Freedom event, Woodbury Library, Woodbury, Connecticut. Remarks supplied.

October 26, 2013: Opening remarks, Connecticut Black Expo, Floyd Little Athletic Center, New Haven, Connecticut. Remarks supplied.

July 10, 2013: Presenter, LAW Camp for Teens, Hon. Angela Robinson and the New Haven County Bar Association, Quinnipiac University School of Law, Hamden, Connecticut. I discussed how to develop a legal argument. I do not

have notes, transcript or recording. The address for the New Haven County Bar Association is 171 Orange Street, Suite 2, New Haven, Connecticut 06506.

May 21, 2013: Presenter, Torch of Liberty Award Dinner, Greater New Haven Chapter of the Anti-Defamation League, Woodbridge, Connecticut. Remarks and press coverage supplied.

April 26, 2013: Panelist, "Winning Bench Trials" program, American Bar Association, Section of Litigation, Annual Meeting, Chicago, Illinois. Notes and PowerPoint supplied.

March 9, 2013: Opening remarks, "A Tuskegee Airman Speaks" event, New Haven Free Public Library, New Haven, Connecticut. Remarks supplied.

March 1, 2013: Speaker, "Night of Hope" event, Filipino American Legal Defense & Educational Fund, New York, New York. Remarks supplied and video available at <https://www.youtube.com/watch?v=fwT9tVgF7o>.

August 2012: Guest Speaker, "Fruits of a Legacy," First Church of God In Christ, 22nd Annual Friends and Family Day, Center Moriches, New York. Remarks supplied.

2012: Guest Lecturer, Ethics and the Commitment to Public Service, Yale Law School, New Haven, Connecticut. Outline supplied.

April 17, 2012: Guest Lecturer, "Ricci, Race and the Contested Space of the Workplace: An Insider's Perspective on Landmark Title VII Litigation," Columbia Law School, New York, New York. Outline supplied.

November 2011: Opening remarks, Veteran's Day Commemoration Ceremony, New Haven County Bar Association, New Haven, Connecticut. Remarks supplied.

May 1, 2011: Guest Speaker, "Repairing the Breach," Old Colony Sunday event, First Church of Christ in New Haven, New Haven, Connecticut. Remarks supplied.

March 4, 2011: Panelist, "Governing the Police and Policing Reentry," Fourteenth Annual Liman Public Interest Symposium Panel, Yale Law School, New Haven, Connecticut. Remarks and press coverage supplied.

February 25, 2011: Opening remarks, event honoring the life of W.E.B. DuBois. Greater New Haven Branch of the NAACP, New Haven, Connecticut. Outline supplied.

February 2011: Panelist, "Talented Tenth: Independent or Indebted,?" 16th

Annual Black Solidarity Conference at Yale: The Modern Renaissance: Educational and Economic Empowerment, New Haven, Connecticut. Remarks supplied.

October 31, 2010: Speaker, Church testimonial, Church of the Redeemer, New Haven, Connecticut. Remarks supplied.

October 31, 2010. Discussion leader, Confirmation Class, Church of the Redeemer, New Haven, Connecticut. Remarks supplied.

September 25, 2010: Introduction of Keynote Speaker, Commemoration of Connecticut Freedom Trail marker at former home of late Judge Constance Baker Motley, Amistad Committee, New Haven, Connecticut. Remarks supplied.

Spring 2010: Panelist, housing discrimination panel, Connecticut Fair Housing Center Annual Conference, Cromwell, Connecticut. Remarks supplied.

Spring 2010: Speaker, First Grade Class, Edgewood School, New Haven, Connecticut. Remarks supplied.

April 30, 2010: Panelist, "Acknowledging Race in a "Post-Racial Era" conference, Benjamin N. Cardozo School of Law, Yeshiva University, New York, New York. Outline supplied.

April 29, 2010: Panelist, "State of Diversity Initiatives & 'Reverse Discrimination' (Post-*Ricci*)," National Employment Law Council, Las Vegas, Nevada. I discussed the impact of the *Ricci v. DeStefano* decision on diversity initiatives. I have no notes, transcript or recording. An address for the sponsoring organization could not be located.

April 22, 2010: Panelist, "How to Win Your Case: Developing a Compelling Trial Theme" program, American Bar Association, Section of Litigation Annual Meeting, New York, New York. I have no notes, transcript or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

March 4, 2010: Speaker, University of New Haven program, West Haven, Connecticut. I do not recall what I discussed. I have no notes, transcript or recording. The address of the University of New Haven is 300 Boston Post Road, West Haven, Connecticut 06516.

February 20, 2010: Speaker, Black History Month program, George W. Crawford Bar Association, Dixwell Congregational Church, New Haven, Connecticut. Copy of speech supplied.

January 8, 2010: Panelist, program on *Ricci* decision, American Association of

Law Schools Annual Meeting, New Orleans, Louisiana. Outline supplied.

October 30, 2009: Panelist, Lincoln on Professionalism Symposium, Connecticut Bar Association/New Haven County Bar Association, New Haven, Connecticut. Notes supplied.

October 23, 2009: Panelist, "Litigation Strategies and Successful Legal Theories" program, American Bar Association Children's Rights Litigation Committee Summit, "Raising Our Hands: Creating A National Strategy for Children's Right to Education and Counsel," Chicago, Illinois. Outline supplied.

October 2009: Remarks, Retirement Event for Oscar Fambro, NAACP Legal Defense and Educational Fund, Inc., New York, New York. Remarks supplied.

October 2009: Panelist, employment discrimination program at Civil Rights Training Institute, NAACP Legal Defense and Educational Fund, Inc., Airlie Conference Center, Warrenton, Virginia. Notes supplied.

September 17, 2009: Speaker, "Title VII/Civil Rights: The New Haven Firefighters," Greater New Haven Branch of the NAACP meeting, New Haven, Connecticut. I discussed the Supreme Court's decision in *Ricci v. DeStefano*. I have no notes, transcript, or recording. The address for the Greater New Haven Branch of the NAACP is 545 Whalley Avenue, New Haven, Connecticut 06511.

August 18, 2009: Panelist, "Discrimination Claims After *Ricci v. DeStefano*," Young Lawyers Section of the Connecticut Bar Association program, Quinnipiac University School of Law, Hamden, Connecticut. I discussed the Supreme Court's decision in *Ricci v. DeStefano*. Video recording is available at: Part 1: <https://www.youtube.com/watch?v=qBKAw8g8Qw8>; Part 2: <https://www.youtube.com/watch?v=pFc-Cano1QE>; Part 3: <https://www.youtube.com/watch?v=pqqmttsigg>.

August 1, 2009: Panelist, "Government Litigators: How Far Must We Go To Seek Justice," American Bar Association Annual Meeting, Criminal Justice Section, Chicago, Illinois. I discussed the obligation of government lawyers to "seek justice." I have no notes, transcript or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

July 30, 2009: Panelist, "Becoming Louis Brandeis: How to Get Trial Experience," American Bar Association Annual Meeting, Chicago, Illinois. I discussed ways to obtain trial experience. I have no notes, transcript or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

June 26, 2009: Remarks, Retirement Event for G. Michael Bagley, NAACP Legal Defense and Educational Fund, Inc., New York, New York. Remarks supplied.

May 1, 2009: Panelist, "The Tough Case is Not Over: Waiver and Preservation on Appeal" program, American Bar Association, Section of Litigation Annual Meeting, Atlanta, Georgia. Written materials and notes supplied.

April 25, 2009: Speaker, "The Fourteenth Amendment and the Promise of Equal Protection," Colloquium on the Constitution, Amherst College, Amherst, Massachusetts. Notes supplied.

2009: Guest Lecturer, Career Paths in the Law, University of New Haven, West Haven, Connecticut. Outline supplied.

January 30-31, 2009: Participant, "Litigation Strategies in the Roberts Court Era," University of California at Irvine Law School, Equal Justice Society. I discussed the issues in the *Ricci v. DeStefano* case. I have no notes, transcript or recording. The address for the Equal Justice Society is 1999 Harrison Street, Suite 810, Oakland, California 94612.

August 9, 2008: Panelist, "Fourteenth Amendment on Trial" program, American Bar Association Annual Meeting, New York, New York. Written materials and press coverage supplied.

June 13, 2008: Panelist, "Rights Without Remedies," American Constitution Society National Convention, Washington, D.C. I do not recall the substance of my remarks. I have no notes, transcript or recording. The address for the American Constitution Society for Law and Policy is 1333 H Street, N.W., 11th Floor, Washington, D.C. 20005.

April 18, 2008: Panelist, "The Litigator's Toolbox: Using the Lessons of Aristotle to Present Outstanding Oral Arguments to Trial Courts and Administrative Agencies," American Bar Association Section of Litigation Annual Meeting, Washington, D.C. I have no notes, transcript or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

March 18, 2008: Panelist, "*District of Columbia v. Heller*: The Advocates Speak," American Constitution Society for Law and Policy, O'Melveny & Myers, LLP, Washington, D.C. I have no notes, transcript or recording. The address for the American Constitution Society for Law and Policy, 1333 H Street, N.W., 11th Floor, Washington, D.C. 20005.

November 9-10, 2007: Participant, "Litigation in the Era of the Roberts Court," Duke Litigation Strategies Conference, Equal Justice Society and Duke University School of Law's Program in Public Law, Durham, North Carolina. I do not recall the topics I discussed. I have no notes, transcript or recording. The

address for the Equal Justice Society is 1999 Harrison Street, Suite 800, Oakland, California 94612.

October 16, 2007: Panelist, "Affirmative Action Debate," Fordham Law School chapter of American Constitution Society for Law and Policy and Fordham Law School chapter of the Federalist Society. I have no notes, transcript or recording. The address for the Fordham Law School is 33 West 60th Street, New York, New York 10023.

September 10, 2007: Panelist, discussion of Supreme Court rulings in *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1* and *Meredith v. Jefferson County Bd. of Educ.*, American Jewish Committee, New York, New York. Outline supplied.

Spring 2007: Presenter, workshops on "The Legal History of Affirmative Action" and "the Sustainability of Racial Justice Organizations," Brazilian Human Rights Lawyer Workshops, Rio de Janeiro and Recife, Brazil. Notes supplied.

January 17, 2007: Keynote Speaker, Martin Luther King, Jr. Celebration, Yale NAACP, New Haven, Connecticut. Remarks and press coverage supplied.

2006: Keynote Speaker, "The Civil Rights Movement: Where Do We Go From Here?" University of New Haven, Keynote Address; West Haven, Connecticut. I discussed the direction of civil rights advocacy in the 21st century. I have no notes, transcript or recording. The address for the University of New Haven is 300 Boston Post Road, West Haven, Connecticut 06516.

March 11, 2006: Speaker, Judge Constance Baker Motley Tribute, Greater New Haven Branch of the NAACP, New Haven, Connecticut. I discussed the life and legal career of Judge Constance Baker Motley. I have no notes, transcript or recording. The address for the Greater New Haven Branch of the NAACP is 545 Whalley Avenue, New Haven, Connecticut 06511.

January 16, 2006: Keynote Speaker, 25th Annual Martin Luther King, Jr. Breakfast Celebration, NAACP Portland Branch, Portland, Maine. Remarks and press coverage supplied.

August 8, 2004: Speaker, "Taking the Oath: Practical and Ethical Considerations in Witness Preparation," American Bar Association Annual Meeting, Atlanta, Georgia. I discussed ethical issues to consider in the preparation of witnesses. I have no notes, transcript or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

May 10, 2004: Presenter, "Admissions in the Post-Gratz-Grutter World," Ten Schools Admission Organization Annual Meeting, The Hotchkiss School, Lakeville, Connecticut. I discussed the impact of U.S. Supreme Court rulings on

race and higher education admissions on secondary school admissions. I have no notes, transcript or recording. The address for Wiggin and Dana is One Century Tower, 265 Church Street, New Haven, Connecticut 06508.

October 17, 2003: Presenter, "Affirmative Action in Higher Education After *Grutter* and *Gratz*," Connecticut Conference of Independent Colleges, St. Joseph's College, West Hartford, Connecticut. I discussed the impact of U.S. Supreme Court rulings on race and higher education admissions. I have no notes, transcript or recording. The address for Wiggin and Dana is One Century Tower, 265 Church Street, New Haven, Connecticut 06508.

September 19, 2003: Presenter, 2003 Connecticut Association of Affirmative Action Officers Meeting, Hartford, Connecticut. I provided an update on affirmative action. I have no notes, transcript or recording. The address for Wiggin and Dana is One Century Tower, 265 Church Street, New Haven, Connecticut 06508.

July 29, 2003: Panelist, Race and Gender Bias Continuing Legal Education Panel, City of Philadelphia Law Department, Philadelphia, Pennsylvania. I provided an analysis of the Supreme Court rulings in *Grutter v. Bollinger* and *Gratz v. Bollinger*, including the likely impact on ruling on affirmative action in minority contracting. I have no notes, transcript or recording. The address of the City of Philadelphia Law Department is the City Solicitor's Office, One Parkway, 1515 Arch Street, 14th to 17th Floors, Philadelphia, Pennsylvania 19102.

April 24, 2003: Presenter, Central Connecticut State University's Diversity Week, Central Connecticut State University, New Britain, Connecticut. I discussed the U.S. Supreme Court cases, *Grutter v. Bollinger* and *Gratz v. Bollinger*. I have no notes, transcript or recording. The address for Wiggin and Dana is One Century Tower, 265 Church Street, New Haven, Connecticut 06508.

March 21, 2002: Panelist, Affirmative Action in Faculty Hiring, National Association of College and University Attorneys (NACUA) Conference; New Orleans, Louisiana. I discussed the state of the law on the use of race and gender in faculty hiring. I have no notes, transcript or recording. The address of the National Association of College and University Attorneys is One DuPont Circle, Suite 620, Washington, D.C. 20036.

March 12, 2002: Speaker, Wiggin and Dana Affirmative Action in College and University Admissions Seminar; New Haven, Connecticut. I conducted a seminar on the state of the law on the use of race as a factor in college and university admissions for several New England colleges and universities. I have no notes, transcript or recording. The address for Wiggin and Dana is One Century Tower, 265 Church Street, New Haven, Connecticut 06508.

November 14, 2001: Moot Court Judge, 25th Annual Charles W. Froessel Moot Court, New York Law School; New York, New York. I have no notes, transcript or recording. The address of the New York Law School is 185 West Broadway, New York, New York 10013.

May 9, 2001: Speaker, Forum on Inclusive and Open Redistricting Process, The Communities of Interest for Fair Redistricting Group, Hartford, Connecticut. I discussed the redistricting process. I have no notes, transcript or recording. I could not locate the address for the sponsoring organization.

2001: Speaker, "5 Questions (About Diversity in Admissions) Every Medical School May Need to Answer" program, Associated Medical Schools of New York, Minority Affairs Advisory Board Conference, New York, New York. I conducted a seminar on the legal challenges for medical schools interested in ensuring a diverse student body. I have no notes, transcript or recording. The address for the Associated Medical Schools of New York is 1270 Avenue of the Americas, Suite 606, New York, New York 10020.

1999: Speaker, Constitutional Language and Educational Rights event, Black Lawyers Association of South Africa, Johannesburg, South Africa. I conducted a workshop on how state court decisions in the United States may provide insight as to how South Africa's constitutional provisions related to education will be interpreted. I have no notes, transcript or recording. The address for the Black Lawyers Association of South Africa is Legal Education Centre, 33 Hoofd Street, Forum 1 Level 5, Braampark Braamfontein Gauteng 2017 South Africa.

1999: Speaker, National Association of Medical Minority Educator's Northeast Regional Conference; Philadelphia, Pennsylvania. I conducted a workshop on equal educational opportunity in higher education. I have no notes, transcript or recording. The address for the National Association of Medical Minority Educators, Inc. is 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27607.

1999: Speaker, Black History Month Program, Digital Democracy Project, Hunter College, New York, New York. I conducted a workshop on the history and current status of civil rights issues. I have no notes, transcript or recording. The address for Hunter College is 695 Park Avenue, New York, New York 10065.

December 1998: Keynote Speaker, Brazilian Black Lawyers Conference, Rio DeJaniero, Brazil. I delivered the keynote address on using the law to address issues of racism and poverty in Brazil, by using legal challenges in the United States as a model. I have no notes, transcript or recording. The address of the sponsoring organization could not be located.

1998: Panelist, Voting Rights and Minority Communities, Asian American Law Students Association Northeast Conference, New York, New York. I participated

in a panel discussion on the impact of the Voting Rights Act on minority communities. I have no notes, transcript or recording. The address of the sponsoring organization could not be located.

1997: Panelist, program on the *Hopwood v. Texas* decision, Teachers' College, Columbia University, New York, New York. I participated in a panel discussion on the impact of *Hopwood v. Texas* on the college and university admissions process. I have no notes, transcript or recording. The address for Teacher College, Columbia University is 525 West 120th Street, New York, New York 10027

1997: Speaker, program on minority contracting, North Carolina Minority Business Association Conference; Wilmington, North Carolina. I conducted a workshop on the changing legal landscape of contracting for women and minority-owned businesses. I have no notes, transcript or recording. The address for the sponsoring organization could not be located.

January 20, 1997: Panelist, "Race and Redistricting: Drawing the Lines," New Jersey State Bar Association Individual Rights Section. I discussed the impact of recent U.S. Supreme Court decisions on the redistricting process and the voting strength of racial minorities. I have no notes, transcript or recording. The address for the New Jersey State Bar Association is 1 Constitution Square, New Brunswick, New Jersey 08901.

1996: Speaker, program on mortgage lending discrimination, Alabama New South Coalition Conference; Selma, Alabama. I conducted a workshop on mortgage lending policies and practices and discrimination. I have no notes, transcript or recording. The address for the Alabama New South Coalition Inc. is 838 South Court Street, Montgomery Alabama 36104.

1996: Panelist, Education Writers Association Conference; Tampa, Florida. I participated in a panel discussion on equal educational opportunity in elementary and secondary school education. I have no notes, transcript or recording. The address for the Education Writers Association is 3516 Connecticut Avenue, N.W., Washington, D.C. 20006.

1994: National Fair Housing Alliance Conference; Washington, D.C. I participated in a panel discussion on homeowner insurance practices and discrimination. I have no notes, transcript, or recording. The address for the National Fair Housing Alliance is 1101 Vermont Avenue, NW, Suite 710, Washington, D.C. 20005.

April 5, 1994: Panelist, "Equity in Public School Funding: A Mandate Requiring Innovative and Aggressive Remedies," Vermont Law School; South Royalton, Vermont. I spoke about public school equity issues. I have no notes, transcript or

recording. The address for the Vermont Law School is 164 Chelsea Street, South Royalton, Vermont 05068.

1992: Columbia College, Columbia University; New York, New York. I participated in a forum on affirmative action. I have no notes, transcript or recording. The address for Columbia College, Columbia University is 208 Hamilton Hall, 1130 Amsterdam Avenue, New York, New York 1027.

1991: Panelist, "The Gulf War -Constitutional & International Issues: At Home and Abroad" forum, New York Law School, New York, New York. I have no notes, transcript, or recording. The address for New York Law School is 185 West Broadway, New York, New York 10013.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

In my capacity as Corporation Counsel for the City of New Haven, I frequently give interviews to local radio, television and print media relating to litigation and other matters in which the city is involved. In my prior capacity as General Counsel for the NAACP Legal Defense & Educational Fund, Inc., I also frequently spoke with the press. I also have spoken to the press on other occasions. I have supplied a list that represents what I believe to be a complete list of interviews to the best of my recollection after reviewing my files and the Internet, as well as copies of those articles. A number of articles or quotations have been reprinted in multiple outlets and under different titles. There may be, however, media appearances that I have been unable to locate or do not recall having made.

New Haven Firefighter Loses His Job After Felony Conviction, New Haven Register, June 3, 2014. Copy supplied.

Proposed Ordinance Change Supports New Haven Construction Workers, New Haven Register, June 2, 2014. Copy supplied.

New Haven Police Sergeant Fighting Suspension Over Alleged Racially and Sexually Charged Comment, New Haven Register, May 2, 2014. Copy supplied.

City Fires Leaders of Budding Union, New Haven Independent, February 25, 2014. Copy supplied.

New Haven Republican Candidate Alleges 'Election Skullduggery' In Race To Fill Harp's Senate Seat, New Haven Register, February 12, 2014. Copy supplied.

Ralliers Rally for Rallying, New Haven Independent, February 11, 2014. Copy supplied.

Candidate Cries Foul At Clerk's Office, New Haven Independent, February 5, 2014. Copy supplied.

New Haven Man Jailed in Murder He Didn't Commit Seeks \$20M, New Haven Register, February 2, 2014. Copy supplied.

Bolden Cans 3 Lawyers, New Haven Independent, January 29, 2014. Copy supplied.

New Haven Aims To Put Brakes on Green Rules Changes, New Haven Register, January 28, 2014. Copy supplied.

Police Chase Case Ends in \$727,000 Settlement, Connecticut Law Tribune, January 24, 2014. Copy supplied.

Long-Ago Land Deal Tangles "The Cage", New Haven Independent, January 8, 2014. Copy supplied.

Harp Resigns New Haven Senate Seat, Holder-Winfield Only One to Express Interest To Date, New Haven Register, January 7, 2014. Copy supplied.

Union Chief Oks James' Job – For 3 Months, New Haven Independent, January 7, 2014. Copy supplied.

Dispute Over 360 State St's New Haven Tax Bill Settled, New Haven Register, December 24, 2013. Copy supplied.

New Haven Green Events Requiring Police May Cost Organizers, New Haven Register, December 24, 2013. Copy supplied.

City, 360 State Compromise on Taxes, New Haven Independent, December 24, 2013. Copy supplied.

Prof Blasts 'Murky' Proposed Rules for Green, New Haven Independent, November 21, 2013. Copy supplied.

City Probe Finds No Discipline Discrimination, New Haven Independent, November 20, 2013. Copy supplied.

New Haven Corporation Counsel: No Evidence of Racial Disparities In Fire Department Discipline, New Haven Register, November 19, 2013. Copy supplied.

Next "Occupy" May Be Easier To Evict, New Haven Independent, November 12, 2013. Copy supplied.

New Haven Mayoral Candidates Agree Something Has To Change To Increase Safety, New Haven Register, November 3, 2013. Copy supplied.

Lawsuit Filed Over iPhone Filming Arrest, Meriden Record-Journal, September 20, 2013. Copy supplied.

Conn. Lawsuit Filed Over iPhone Camera Arrest, Associated Press, September 19, 2013. Copy supplied.

Civil Rights Lawsuit Filed In Police-Filming Case, Hartford Courant, September 19, 2013. Copy supplied.

Man Files Civil Rights Suit Over New Haven Arrest For Filming, New Haven Register, September 18, 2013. Copy supplied.

Vindicated Cop-Photographer Sues City, New Haven Independent, September 18, 2013. Copy supplied.

New Haven Fire Department Special Master Says Position No Longer Needed, New Haven Register, September 12, 2013. Copy supplied.

Pilot Seeks To Clear Name In Suit Against New Haven Cop, New Haven Register, September 5, 2013. Copy supplied.

Where's The Fire Marshal?, New Haven Independent, September 3, 2013. Copy supplied.

New Haven Fire Union President Plans To Challenge Promotions, New Haven Register, August 29, 2013. Copy supplied.

Exonerated Cop Hits \$235,135 Jackpot, New Haven Independent, August 29, 2013. Copy supplied.

New Haven Absentee Ballots Mailed, Despite Dispute Over Aldermen Slots, New Haven Register, August 26, 2013. Copy supplied.

Toni Harp, Michael Smart Team Up On Primary Ballot, Triggering Protest From Their Competitors, New Haven Register, July 26, 2013. Copy supplied.

State Clears Harp In Petition Drive, New Haven Independent, July 26, 2013. Copy supplied.

Ex-City Official Returns To Lobby City, New Haven Independent, July 12, 2013. Copy supplied.

Former Tax Assessor Sues City, New Haven Independent, July 2, 2013. Copy supplied.

Alleged Racial Disparities In Discipline Probed in New Haven Fire Department, New Haven Register, June 29, 2013. Copy supplied.

Racism? Or Sour Grapes?, New Haven Independent, June 24, 2013. Copy supplied.

6 Vie To Buy Failed Housing Co-op, New Haven Independent, June 11, 2013. Copy supplied.

Police Brutality Suits: New Haven, Hamden, West Haven, East Haven Face Most Complaints In Greater New Haven, New Haven Register, April 27, 2013. Copy supplied.

Aldermen Change Ward Map, Yale Daily News, April 19, 2013. Available at pp. 1, 6 of <http://issuu.com/yaledailynews/docs/issuu04191>.

Dead Man's Brother Sues City, New Haven Independent, April 11, 2013. Copy supplied.

Judge Tosses Lawsuit Against James Hillhouse High School, New Haven Register, April 9, 2013. Copy supplied.

Estate Of Woman Killed By U-Haul Truck At 2011 Yale-Harvard Game Tailgate Files Wrongful Death Lawsuit, New Haven Register, April 6, 2013. Copy supplied.

New Haven Faces Negligence Suit in 2011 Arson that Killed 3, New Haven Register, March 26, 2013. Copy supplied.

City Could Be On Hook For Planting Drugs, New Haven Independent, March 25, 2013. Copy supplied.

Man Files Complaint Against City Police, New Haven Register, March 23, 2013. Copy supplied.

Judge Rejects Suit Over Promotions, New Haven Register, February 8, 2013. Copy supplied.

New Haven Fire Department Ability Test Has Friends, Foes, New Haven Register, February 8, 2013. Copy supplied.

False Forced Testimony Costs City \$200K, New Haven Independent, January 11, 2013. Copy supplied.

New Haven Firefighters' Case Merits Full Probe By State Panel, New Haven Register, January 6, 2013. Copy supplied.

Ann McGinley, *Cognitive Illiberalism, Summary Judgment, and Title VII: An Examination of Ricci v. DeStefano*, 57 N.Y.U. Sch. L. Rev. 865, n. 89 (2012-2013). Copy supplied.

New Haven 10 Won't Block Promotions, New Haven Independent, December 5, 2012. Copy supplied.

New Haven Mother Left In The Dark About Missing Son Plans To Sue Police, New Haven Register, November 28, 2012. Copy supplied.

Judge Postpones Hearing On New Haven Cops' Job Discrimination Claims, New Haven Register, November 20, 2012. Copy supplied.

Deal on Sergeants Exam Doesn't Fly, New Haven Independent, November 19, 2012. Copy supplied.

Cops Sued Over Elevate Raid, New Haven Independent, November 15, 2012. Copy supplied.

10 New Haven Cops Sue Over Promotions, New Haven Register, November 14, 2012. Copy supplied.

New Haven 10 Seek To Block Police Promotions, New Haven Independent, November 14, 2012. Copy supplied.

Government and Corporate Lawyers Looked To Past To Prepare For Storm, Connecticut Law Tribune, November 2, 2012. Copy supplied.

Never Mind! New Haven Independent, November 2, 2012. Copy supplied and video recording available at <https://www.youtube.com/watch?v=Z35Po0UpKF8>.

New Haven City Attorney Calls McMahon Challenge on Ballots 'Political Grandstanding', Connecticut Mirror, November 1, 2012. Copy supplied.

McMahon Seeks Emergency Order vs. City, New Haven Independent, November 1, 2012. Copy supplied.

City Looks to Tame Dirt-Bike "Wild West", New Haven Independent, October 9, 2012. Copy supplied.

Pulse Patrons Flip Cops the Bird, New Haven Independent, October 5, 2012. Copy supplied.

As Exams Loom, Legal Challenge Grows, New Haven Independent, October 1, 2012. Copy supplied.

Property Trust Asks New Haven Aldermen To Fix 360 State Street Taxes, New Haven Register, August 31, 2012. Copy supplied.

Judge Extends New Haven Fire Department Oversight; Special Master Must Ok All Promotions, New Haven Register, August 26, 2012. Copy supplied.

Lawsuit Alleges Racial Profiling by New Haven Police, New Haven Register, August 6, 2012. Copy supplied.

Sisters Claim Racial Profiling in Traffic Stop, New Haven Independent, July 13, 2012. Copy supplied.

Oldest City Hall Worker Passes, New Haven Independent, June 29, 2012. Copy supplied.

New Haven City Hall Mourns Loss of Oldest Employee, Who Was 92, New Haven Register, June 28, 2012. Copy supplied.

David Greenberg, Oldest City Hall Employee, Dies at 92, City of New Haven press statement, June 27, 2012. Copy supplied.

U.S. Supreme Court Won't Hear Race-Based Suit Challenging New Haven Fire Department Promotions, New Haven Register, June 11, 2012. Copy supplied.

Supreme Court Passes On Ricci Redux, New Haven Independent, June 11, 2012. Copy supplied.

Occupy New Haven Cost Taxpayers \$145,000, City Says, New Haven Register, June 8, 2012. Copy supplied.

City Paid \$65K For Occupy Advice, New Haven Independent, June 8, 2012. Copy supplied.

'Occupy' Dismantled; 13 Arrested, Hartford Courant, April 19, 2012. Copy supplied.

New Haven Demonstrators Start Packing After Losing Court Appeal, Hartford Courant, April 18, 2012. Copy supplied.

Housing Judge Rejects Last-Ditch Occupy Filing, New Haven Independent, April 17, 2012. Copy supplied.

Occupiers Begin Dismantling Camp, New Haven Independent, April 17, 2012. Copy supplied.

Court Rules City Can Boot Occupy, New Haven Independent, April 17, 2012. Copy supplied.

Occupy Odyssey; The Unrelenting Legal Saga of New Haven Green Protest, Connecticut Law Tribune, April 16, 2012. Copy supplied.

For Some, Occupy New Haven An Idea Whose Time Is Up, New Haven Register, April 12, 2012. Copy supplied.

DeStefano, Pattis Bring Dispute Over Occupy New Haven to the Airwaves, New Haven Register, April 12, 2012. Copy supplied.

Eviction of Occupy New Haven Halted By Federal Judge, Meriden Record-Journal, April 11, 2012. Copy supplied.

Eviction Halted At Occupy New Haven, New Haven Independent, April 10, 2012. Copy supplied.

Court: City Ignored Request, New Haven Independent, April 10, 2012. Copy supplied.

New Haven Settles Sex-Bias Complaint for \$20,000, New Haven Register, March 29, 2012. Copy supplied.

Court Case Leads To Question: Who's in charge of the Green, New Haven Register, March 18, 2012. Copy supplied.

Occupy Takes Legal Step; With Deadline Looming, Group Seeks Injunction, Sues City, New Haven Register, March 14, 2012. Copy supplied.

Occupy New Haven Gets 2-Week Reprieve, New Haven Independent, March 14, 2012. Copy supplied.

Occupy New Haven Digs In, Seeks Court Order To Let Them Stay, New Haven Register, March 13, 2012. Copy supplied.

Last-Ditch Occupy Suit Seeks Proprietors' Demise, New Haven Independent, March 13, 2012. Copy supplied.

Occupy Unfurls Flag of Defiance, New Haven Independent, March 12, 2012. Copy supplied.

Occupiers Weigh Plans To Fight 'Eviction,' New Haven Independent, March 7, 2012. Copy supplied.

Fire Test Issue Again Heads To High Court?, New Haven Register, February 16, 2012. Copy supplied.

New Haven Could Be Headed Back To U.S. Supreme Court, Again Over Fire Department Issue, New Haven Register, February 15, 2012. Copy supplied.

Why Kick Her To The Curb, New Haven Independent, January 30, 2012. Copy supplied.

Firefighter Union Hires Lawyer, New Haven Register, January 21, 2012. Copy supplied.

New Haven Firefighter Union Hires Lawyer In Exam Battle, New Haven Register, January 20, 2012. Copy supplied.

Anyone Seen A Non-Democrat?, New Haven Independent, January 18, 2012. Copy supplied.

FBI Probe Heads To City Hall, New Haven Independent, January 12, 2012. Copy supplied.

"New Haven 10" Seeks Ricci Redux, New Haven Independent, January 4, 2012. Copy supplied.

Family of Motorcycle Accident Victim Sues New Haven, School, Ex-Cop, New Haven Register, January 3, 2012. Copy supplied.

Gwyn Sondike, *Incremental Change and Transformational Governance: A Case Study of the Promotion Testing Process for Firefighters in the City of New Haven in the Context of Ricci v. DeStefano*, Doctoral Dissertation, 2011. I have supplied a copy although some statements related to the number of minorities hired since the *Ricci* decision were misattributed to me.

Benefits Changes In The Works For Top City Execs; Longevity Pay Out, But Other Perks Improve, Irking Union, New Haven Register, December 5, 2011. Copy supplied.

Should City Workers Wait 90 Days For Health Care, New Haven Independent, December 1, 2011. Copy supplied.

New Haven Considers Residency Requirement for Firefighters, NBC News Connecticut, November 17, 2011. Copy supplied.

Kerekes Decries \$2M in "Special Deals?" New Haven Independent, November 3, 2011. Copy supplied.

New Haven Mayoral Hopeful Jeffrey Kerekes Claims City Lost \$2 Million In Potential Revenue, New Haven Register, November 2, 2011. Copy supplied.

Ricci's Not Over, New Haven Independent, October 28, 2011. Copy supplied.

Kerekes: Hire Inspector General, New Haven Independent, October 27, 2011. Copy supplied.

Kerekes Questions New Haven Contracts, Calls for Office of Inspector General, New Haven Register, October 26, 2011. Copy supplied.

Kimber Files Notice To Sue City, New Haven Independent, October 24, 2011. Copy supplied.

Rally Held Against Police Brutality In New Haven, New Haven Register, October 14, 2011. Copy supplied.

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13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not served as a judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

- i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have

come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

On January 15, 2009, I was appointed Acting Corporation Counsel for the City of New Haven by then-New Haven Mayor John DeStefano, Jr. In April 2009, I was appointed by Mayor DeStefano to fulfill the remainder of the two-year term as Corporation Counsel. Mayor DeStefano reappointed me to a two-year term in January 2010 and to another two-year term in January 2012. In January 2014, I was appointed to a two-year term as Corporation Counsel for the City of New Haven by current New Haven Mayor Toni Harp.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Since 2002, I have served as a member of the Twenty-Fifth Ward Democratic Town Committee of the City of New Haven, although I was largely inactive from 2002 to 2009, and I have not participated in any election-day activities since the 2011 election. The Committee hosts town hall meetings with updates on local issues, endorses candidates for the Board of Alders from the Twenty-Fifth Ward of the City of New Haven in contested primaries, and provides support on

Election Day to the Democratic candidate. During my time on the Committee, there have only been two Democratic primaries for the position of Alder for the Twenty-Fifth Ward. In 2003, the Committee endorsed Ina Silverman in her primary race against Anthony Wallace and supported her during her general election later that year. The Committee supported her again in 2005 and 2007, when she was the uncontested Democratic candidate. In 2009, Alder Silverman chose not to run for re-election, and the Committee supported Gregory Dildine, who was the uncontested Democratic candidate. In 2011, the Committee endorsed Michael Slattery in the primary election, but subsequently supported Adam Marchand in the general election after he won the primary. The Committee supported him again in 2013, when he was the uncontested Democratic candidate. I have included any election activity in which I have personally participated below.

In 2011 and 2009, I volunteered for Mayor DeStefano's reelection campaigns. I handed out campaign literature and made reminder calls to voters. In 2011, I also volunteered in Michael Slattery's campaign for the Board of Alders to represent the Twenty-Fifth Ward. I introduced him to voters and assisted at the primary election by handing out campaign literature at the polls and making reminder calls to voters. In 2009, I volunteered for Katrina Jones' campaign for the Board of Alders to represent the Twenty-First Ward by handing out campaign literature on Election Day. In 1991, I was a volunteer lawyer for the campaign of Peter Williams for City Council in Brooklyn, New York. I helped the campaign ensure compliance with election laws and assisted with a ballot challenge of an opposing candidate.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a clerk for a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1989 – 1994

American Civil Liberties Union Foundation

125 Broad Street
New York, New York 10004
Staff Attorney (1990 – 1994)
Karparkin Fellow (1989 – 1990)

1994 – 2000
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, New York 10006
Assistant Counsel

2000 – 2005
Wiggin and Dana
One Century Tower
265 Church Street
P.O. Box 1832
New Haven, Connecticut 06508
Counsel (2004 – 2005)
Associate (2000 – 2003)

2005 – 2009
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, New York 10006
General Counsel

2009 – present
Office of the Corporation Counsel
City of New Haven
165 Church Street
New Haven, Connecticut 06510
Corporation Counsel (April 2009 – present)
Acting Corporation Counsel (January 2009 – April 2009)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1989 to 1994, as a Karpatkin Fellow and then a staff attorney at the ACLU, I worked on a wide variety of federal and state constitutional and statutory issues on both the trial and appellate level with considerable work on education and housing issues, as well as a case involving the rights of the mentally ill. My activities included legal research and writing, conducting fact investigations, written discovery and depositions, drafting motions and briefs and preparing and presenting both lay and expert testimony at trial, as well as writing an *amicus curiae* brief at the appellate level.

From 1994 to 2000, as an Assistant Counsel at the NAACP Legal Defense & Educational Fund, Inc., I continued working on federal constitutional and statutory issues at the trial and appellate level. My trial practice included bench trials and a jury trial, as well as discovery and motion practice. My appellate activities included arguments before the United States Court of Appeals for the Tenth Circuit and the Louisiana Supreme Court, as well as party and *amicus curiae* submissions to the United States Supreme Court.

From 2000 to 2005, during my time at Wiggin and Dana, my law practice included a variety of commercial litigation matters, such as products liability, medical malpractice and defense of employment actions, as well as First Amendment and libel issues. My trial practice included arguing and obtaining summary judgment in libel matters and defending news reporters subpoenaed to testify in court, as well as assisting with an injunction action brought against an employer. My appellate practice included working on briefs for the Connecticut Supreme Court and the United States Supreme Court, as well as arguing before the United States Court of Appeals for the Eleventh Circuit.

From 2005 to 2009, as the NAACP Legal Defense & Educational Fund, Inc.'s General Counsel, I served as an in-house counsel on operational matters, provided strategic advice and guidance on a number of both trial and appellate matters, and was responsible for the day-to-day operations of the organization's offices around the country. I also served as counsel of record on an *amicus curiae* brief to the United States Supreme Court.

Since 2009, as New Haven's Corporation Counsel, I have served as the chief legal adviser to a municipality with a general operating budget of about a half-billion dollars and nearly 4,500 employees. I am the direct supervisor of about two dozen staff members and oversee a legal docket of over a thousand cases in the United States District Court of Connecticut, the State of Connecticut's Superior Court and Connecticut's administrative agencies. I primarily consult on the cases in the docket, although I also become more actively involved in litigation with the greatest exposure for the City of New Haven and, in such cases, have

participated directly in court proceedings, even arguing cases. I have argued dispositive motions before the United States District Court of Connecticut and an appeal before the United States Court of Appeals for the Second Circuit. I also have worked closely with counsel on matters before the United States Supreme Court involving the City of New Haven. I also have been involved with *amicus curiae* submissions on behalf of the City of New Haven in conjunction with other municipalities.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1990 to 1994, while at the ACLU, I represented patients in a state mental health facility, parents and students in education matters, and homeowners in a housing discrimination lawsuit.

From 1994 to 2000, while at the NAACP Legal Defense & Educational Fund, Inc., I represented an employee in an employment discrimination case, voters in voting rights matters, homeowners and would-be homeowners in housing discrimination matters and parents and students in education matters at both the primary and secondary education level, mainly school desegregation cases and students at the college and university level in cases involving access to higher education.

From 2000 to 2005, while in the private practice of law, I represented employers in employment discrimination matters, hospitals in medical malpractice actions and in governmental investigations, newspapers and media companies in libel actions as well as defending against subpoenas to compel testimony from journalists, corporations in defense of products liability lawsuits and other actions.

From 2005 to 2009, as in-house counsel for the NAACP Legal Defense & Educational Fund, Inc., I tended to the institutional legal needs of a non-profit organization. I also advised on pending civil rights matters, particularly education-related cases involving students.

From 2009 to the present, as the chief lawyer for a municipality, I represent public officials, the Mayor of the City of New Haven, the Board of Aldermen and other such officials and municipal employees, including but not limited to members of the New Haven Department of Police Services, the New Haven Board of Education, the New Haven Department of Fire Services, and the New Haven Department of Public Works, against a variety of claims.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

During the years I practiced at the ACLU and the NAACP Legal Defense and Educational Fund, Inc., I engaged in significant discovery work, and I appeared in court occasionally to address scheduling matters, argue motions or in preparation for or during a trial. I appeared in court more regularly at Wiggin and Dana, particularly because I could be called on a moment's notice to appear on behalf of a reporter who had been subpoenaed. Since 2009, as the City of New Haven's Corporation Counsel, my role has been to oversee all of the civil litigation involving the City of New Haven. Although I typically do not appear in court, I do still appear on occasion.

- i. Indicate the percentage of your practice in:
 1. federal courts: 65%
 2. state courts of record: 25%
 3. other courts: 0%
 4. administrative agencies: 10%
- ii. Indicate the percentage of your practice in:
 1. civil proceedings: 98%
 2. criminal proceedings: 2%
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have participated in five trials to verdict, judgment or final decision. I was chief counsel in one of the five cases and served as co-counsel in the other matters with significant trial responsibility including the presentation of testimony.

 - i. What percentage of these trials were:
 1. jury: 20%
 2. non-jury: 80%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

Throughout the course of my career, I have represented parties both directly and as *amicus curiae* before the U.S. Supreme Court and also have assisted in the preparation of briefs without attribution. After searching my records and electronic databases, I have identified and am providing copies of the submissions in all of these Supreme Court matters:

City of New Haven v. Briscoe, 654 F.3d 200 (2011), *cert. denied*, ___ U.S. ___, 132 S. Ct. 2741 (2012) (petition for a writ of certiorari, 2012 WL 549257; reply brief, 2012 WL 1550591).

Township of Mount Holly v. Mt. Holly Gardens Citizens in Action, Inc., 658 F.3d 375 (3d Cir. 2011), *cert. granted*, ___ U.S. ___, 133 S. Ct. 2824, *cert. dismissed* ___ U.S. ___, 134 S. Ct. 636 (2013) (*amicus curiae* brief on behalf of governments of San Francisco, Atlanta, Flint, New Haven, Philadelphia, Toledo, King County, Washington and City of Seattle Office of Civil Rights in support of respondents Mt. Holly Gardens Citizens in Action, Inc., 2013 WL 5820525).

State of Arizona v. United States, 567 U.S. ___, 132 S. Ct. 2492 (2012) (*amicus curiae* brief on behalf of various cities, counties, the United States Conference of Mayors and the National League of Cities in support of respondents, 2012 U.S. S. Ct. Briefs LEXIS 1239).

Ricci v. DeStefano, 557 U.S. 557 (2009) (brief for respondents, 2009 WL 740763).

Michigan Civil Rights Initiative Committee v. Coalition to Defend Affirmative Action, 501 F.3d 775, *cert. denied*, 555 U.S. 937 (2008) (brief in opposition to petition for certiorari, 2008 WL 2415468).

Michigan Civil Rights Initiative Committee v. Coalition to Defend Affirmative Action, No. 06A678 (2007) (motion for leave to file brief and brief of *amicus curiae* the Cantrell plaintiffs in support of petitioners, copy supplied).

District of Columbia v. Heller, 554 U.S. 570 (2008) (*amicus curiae* brief on behalf of the NAACP Legal Defense & Educational Fund, Inc. in support of petitioner, 2008 WL 157192).

Parents Involved in Community Schools v. Seattle School District No. 1, and *Meredith v. Jefferson County Board of Education*, 551 U.S. 701 (2006) (*amicus curiae* brief on behalf of the NAACP Legal Defense & Educational Fund, Inc. in support of respondents, 2006 WL 2927075).

Grutter v. Bollinger and *Gratz v. Bollinger*, 539 U.S. 306 (2003) and 539 U.S. 244 (2003) (*amicus curiae* brief on behalf of the cities of Philadelphia, Pennsylvania and Cleveland, Ohio as well as the National Conference of Black Mayors on behalf of respondents, 2003 WL 399093).

Manning v. Hillsborough County School Board, 244 F.3d 927, *cert. denied*, 534 U.S. 824 (2001) (petition for a writ of certiorari, 2001 WL 34125257; reply brief, 2001 WL 34125258).

Hunt v. Cromartie, 526 U.S. 541 (1999) (brief of appellant-intervenors, 1998 WL 792304; reply brief of appellant-intervenors, 1998 WL 906323)

State of Texas v. United States, 523 U.S. 296 (1998) (*amici curiae* brief on behalf of American Civil Liberties Union and the NAACP Legal Defense & Educational Fund, Inc. in support of appellee, 1997 WL 770554).

Romer v. Evans, 517 U.S. 620 (1995) (*amici curiae* brief on behalf of the NAACP Legal Defense & Educational Fund, Inc., the Mexican American Legal Defense and Educational Fund, and the Women's Legal Defense Fund in support of respondents, 1995 WL 17008435).

Illinois v. Perkins, 496 U.S. 292 (1990) (*amicus curiae* brief on behalf of the American Civil Liberties Union and the ACLU of Illinois in support of respondent, 1989 WL 1127124).

Alabama v. White, 496 U.S. 325 (1990) (*amicus curiae* brief on behalf of the American Civil Liberties Union, the ACLU of Alabama and the National Association of Criminal Defense Lawyers in support of respondent, 1989 WL 1127457).

Finally, since 2012, I have served on the American Bar Association's ("ABA") Standing Committee on Amicus Curiae Briefs. This work, however, is not part of my practice, as the briefs considered by this Committee are drafted by outside counsel and Committee members' names are not listed on the briefs. Members of this Committee review and edit Supreme Court briefs filed by the ABA to assure that they are consistent with ABA policy.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *MEPT Chapel Street LLC v. City of New Haven*
 HHB-CV-12-6018449-S, Conn. Super., December 26, 2013
 (judgment by stipulation before trial commenced)
 HHB-CV-11-601457-S, Conn. Super. , Dec. 30, 2013
 (withdrawal of action)
MEPT Chapel Street QALICB LLC v. City of New Haven
 HHB-CV-12-6018450-S, Conn. Super., Dec. 26, 2013
 (judgment by stipulation before trial commenced)
 HHB-CV-11-6014156-S, Conn. Super., Dec. 30, 2013
 (withdrawal of action)

These four combined cases involved a major legal challenge to the City of New Haven's property tax assessment system. The underlying property had been built as part of a large economic development project in New Haven and resulted in the building of high-quality residential housing as well as an upscale food market in the city's downtown. As part of the inducement to build, the developers received substantial tax abatements. The developers and subsequent property owners also believed that the real estate's property tax exposure had been capped at levels disclosed by City officials upon receiving approval from the City's legislative body to enter the deal and allegedly had based investment decisions based on these tax projections. The City's tax assessor valued the property using the cost methodology – basing the project's value based on the cost to build – resulting in a tax number more than three times what the developers and property owners expected. This litigation ensued. I actively participated in the evaluation of the legal claims and settlement discussions. Ultimately, this matter settled with the help of a private mediator, a former federal judge, who had served on the United States District Court of Connecticut.

Date of representation:	2011 to 2013
Court:	Connecticut Superior Court, New Britain
Judge(s):	Honorable Arnold W. Aronson (Superior Court) Honorable Eliot Prescott (Superior Court) Honorable Alan Nevas (former U.S. District Court judge/mediator)
Co-counsel:	James Perito Michael Leone Gerald Giamo Halloran and Sage 195 Church Street, 15th Floor New Haven, CT 06509 (203) 672-5432

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Bingham
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2. *Mitchell v. City of New Haven*, 854 F.Supp.2d 238 (D.Conn. 2012)

Protestors associated with the Occupy Wall Street movement set up tents on a portion of downtown New Haven, known as the New Haven Green, to dramatize issues of poverty. After the protestors were asked to leave, they sued the City of New Haven, city officials and the Proprietors of the Green, who have the legal right to manage this public space, alleging a First Amendment right to stay there. The United States District Court for the District of Connecticut upheld the City of New Haven's right to evict the protestors for failing to comply with reasonable regulations, a decision affirmed by the United States Court of Appeals for the Second Circuit. While I relied on outside counsel for the day-to-day litigation, I directed the City's legal efforts in the case both before and after the preliminary injunction hearing in the matter.

Date of representation: 2012

Court: United States District Court for the District of
Connecticut
United States Court of Appeals for the Second
Circuit

Judges: Honorable Mark R. Kravitz (deceased)
(heard preliminary injunction
hearing)
Honorable Janet C. Hall (U.S. District Court)
(presided over temporary restraining order hearing)

Co-counsel: City of New Haven	John Horvack Fatima Lahnin Carmody Torrance 195 Church Street New Haven, Connecticut 06509 (203) 777-5501
Co-counsel: Proprietors of the Green	Al Pavlis Anthony Miodonka Finn Dixon 177 Broad Street Stamford, Connecticut 06901 (203) 325-5000
Opposing counsel:	Norman Pattis Law Offices of Norman A. Pattis, LLC 649 Amity Road Bethany, Connecticut 06524 (203) 393-3017

3. *Ricci v. DeStefano*, 557 U.S. 557 (2009)

The case involved a challenge under Title VII of the Civil Rights Act of 1964's disparate treatment provision, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and other federal and state law provisions to the failure of the City of New Haven to certify and promote consistent with the results of promotional examinations for the ranks of lieutenant and captain in the New Haven Department of Fire Services. The district court granted summary judgment in the City of New Haven's favor and the Second Circuit affirmed this ruling. The United States Supreme Court granted certiorari, reviewed the case and ruled against the City of New Haven, holding that the City of New Haven's disparate impact defense did not have "a strong basis in evidence" and therefore, could not shield it from liability under Title VII's disparate treatment provisions.

I became Corporation Counsel for the City of New Haven shortly after the grant of certiorari and worked with outside counsel in the case's preparation before the Supreme Court of the United States. After the Supreme Court's adverse decision and upon remand to the district court, I ensured that the court's orders were complied with and that those who should have been promoted, based on the results of the respective examinations, were promoted. I also worked with outside counsel to limit the scope of the City's liability to Title VII alone and then sought the resolution of the monetary aspects of the case through offers of judgment under Rule 68 of the Federal Rules of Civil Procedure, which were accepted by the plaintiffs and ended seven years of legal proceedings.

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Date of Representation: 2009 to 2011

Courts: United States Supreme Court
U.S. Court of Appeals for the Second Circuit
U.S. District Court for the District of Connecticut

District Court Judge: Hon. Janet Bond Arterton

Co-counsel: Richard Roberts
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Gregory Coleman (deceased)

4. *Briscoe v. City of New Haven*, No. 3109-CV-1642 (CSH), 2010 WL 2794212 (D.Conn. July 12, 2010), *rev'd* 654 F.3d 200 (2d Cir. 2011), 2013 WL 4780097 (D.Conn. Sept. 9, 2013)

Following the United States Supreme Court's ruling in the *Ricci v. DeStefano* case, an African-American firefighter, Mr. Briscoe, filed suit against the City of New Haven, claiming that the promotional exam for lieutenant discriminated against him on the basis of race, citing Title VII of the Civil Rights Act of 1964's disparate impact provision. Based on the Supreme Court's ruling in *Ricci*, I argued the City of New Haven's motion to dismiss the case, which was granted.

Briscoe appealed this decision to the United States Court of Appeals for the Second Circuit ("Second Circuit"), and I argued the appeal before the Second Circuit on the City's behalf. The Second Circuit reversed the district court's decision. As a result, the Briscoe case was remanded back to the district court for further proceedings, with the Second Circuit expressing no view as to whether the case should be dismissed on other grounds. After the case was remanded back to the district court, the City of New Haven presented other grounds for dismissing the case. I argued the matter before the district court again and the district court dismissed the case a second time. While Briscoe's appeal before the Second Circuit was pending, the case settled.

Date of Representation: 2009 to 2014

Courts: United States District Court of Connecticut
United States Court of Appeals for the Second Circuit
United States Supreme Court

Judge(s): Honorable Charles Haight (U.S. District Court of Connecticut)

Honorable Dennis Jacobs, former Chief Judge (Second Circuit)
Honorable Ralph Winter (Second Circuit)
Honorable Jose Cabranes (Second Circuit)

Co-counsel: Richard Roberts

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Counsel for:
defendant-intervenors Karen Lee Torre
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5. *Durkin v. Intervac, Inc.*, 258 Conn. 454, 576 A.2d 518 (2001)

When two Australian military Black Hawk helicopters collided in midair and crashed during a training exercise, some of those injured in the collision and the estates of those who died in the crash filed suit in Connecticut, alleging that night vision goggles had caused the accident and that the defendants, various corporations, had failed to design, manufacture and test the night vision goggles and related equipment. Defendants moved to dismiss the case, arguing that Connecticut was an inconvenient forum in which to try the case and that the proper forum was Australia. The trial court denied the motion. The Connecticut Supreme Court reversed the trial court decision and recognized that Australia was the proper forum, given that key witnesses and evidence remained in Australia.

Along with co-counsel from Wiggin and Dana, I worked on the appeal of the trial court's denial of the motion, developing the arguments for the appeal on behalf of all of the defendants.

Date of representation: 2000 to 2001

Court: Connecticut Supreme Court

Justices: Honorable William Sullivan, Chief Justice
Honorale David Borden, Associate Justice
Honorale Fleming Norcott, Associate Justice
Honorale Joette Katz, Associate Justice
Honorale Richard Palmer, Associate Justice
Honorale Christine Vertefeuille, Associate Justice
Honorale Peter Zarella, Associate Justice

Co-counsel: Hon. Mark Kravitz (deceased)
(formerly of Wigin and Dana)

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6. *Manning v. Hillsborough County Sch. Bd.*, 24 F.Supp.2d 1277 (M.D. Fla. 1998), *rev'd* 244 F.3d 927 (11th Cir.), *cert. denied*, 534 U.S. 824 (2001)

In a school desegregation case involving one of the largest school districts in the country, Hillsborough County, Florida, I served as lead counsel for plaintiffs in federal district court proceedings to determine whether court supervision over this school system should end. Following considerable discovery and seven days of substantial lay and expert testimony, a magistrate judge recommended termination of court supervision. After subsequent filings before the district court judge, this recommendation was rejected and court supervision was maintained.

The Hillsborough County School Board appealed this decision to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit reversed the district court's decision and ordered the end of federal court supervision. The Supreme Court denied certiorari. I was counsel of record on the brief in the Eleventh Circuit and argued the matter there, as well as drafting the petition for certiorari to the Supreme Court.

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Date of Representation: 1995 to 2001

Courts: United States District Court of the Middle District of Florida
United States Court of Appeals for the Eleventh Circuit
United States Supreme Court

Judge(s): Honorable Elizabeth Kovachevich (U.S. District Court of the Middle District of Florida)
Honorable Elizabeth Jenkins (U.S. District Court of the Middle District of Florida)
Honorable Emmett Ripley Cox (Eleventh Circuit)
Honorable Susan H. Black (Eleventh Circuit)
Honorable Peter T. Fay (Eleventh Circuit)

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Opposing counsel: W. Crosby Few (now deceased)

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7. *Perschall v. State of Louisiana*, 96-322 (La. 7/1/97), 697 So.2d 240 (1997)

To remedy the violation of the Voting Rights Act of 1965 found in *Chisom v. Roemer*, involving the election process for Louisiana's Supreme Court, legislators in Louisiana adopted Act 512 that temporarily created a position for an eighth justice on the Louisiana Supreme Court. Act 512 subsequently became codified in a consent judgment in that case before the United States District Court of the Eastern District of Louisiana. Mr. Perschall filed a lawsuit claiming that Act 512 violated the Louisiana Constitution, specifically Article V, Section of the Louisiana Constitution, providing for a Louisiana Supreme Court with a chief justice and six associate justices.

Although filed in state court, the State of Louisiana removed the matter to the United States District Court of the Eastern District of Louisiana. Relying on the abstention doctrine, the federal district court remanded the case back to state court for resolution of the issue of whether Act 512 had been violated. The Louisiana Supreme Court decided to exercise its supervisory jurisdiction, granted certiorari to hear the case and ordered the lower state courts bypassed.

The Louisiana Supreme Court held that Act 512 violated the Louisiana Constitution, but also held that this ruling could have no effect on the consent judgment put in place by the federal court. When the matter returned to the United States District Court of the Eastern District of Louisiana, the federal district court held that, despite the Louisiana Supreme Court's ruling finding Act 512 unconstitutional, Perschall was not entitled to any additional relief. Perschall appealed this ruling to the United States Court of Appeals for the Fifth Circuit. After the submission of briefs, the Fifth Circuit issued a per curiam opinion upholding the District Court's mootness ruling and ending the case.

I represented the *Chisom* plaintiffs, who had intervened in the *Perschall* case, and argued the matter before the Louisiana Supreme Court. Subsequently, I represented the *Chisom* intervenors before the Eastern District of Louisiana and the Fifth Circuit.

Date of Representation: 1995 to 1999

Court: Louisiana Supreme Court
United States District Court for the Eastern District of Louisiana
United States Court of Appeals for the Fifth Circuit

Judges: Honorable Catherine Kimball (La. Supreme Court)
Honorable Charles A. Marvin. (Court of Appeals, Second Circuit sitting by designation)
Honorable Freddie Pitcher, Jr., (Court of Appeals, First Circuit sitting by designation)
Honorable Harry Lemmon (La. Supreme Court)
Honorable Jeffrey Victory (La. Supreme Court)
Honorable Chet Traylor (La. Supreme Court)
Honorable Jeanette Theriot Knoll (La. Supreme Court)

Honorable Charles Schwartz, Jr. (U.S. District Court)

Honorable Carolyn Dineen King (Fifth Circuit)
Honorable Rhesa Hawkins Barksdale (Fifth Circuit)
Honorable Carl Stewart (Fifth Circuit)

Co-counsel: William P. Quigley
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Opposing counsel: Clement Perschall, Jr. (deceased)
(representing himself)

8. *Price v. Gadsden Corp.*, No. 93-CV-1784 (N.D. Ala. filed Aug. 30, 1993)

Working with co-counsel, I represented an African-American couple in a case involving a claim of racial discrimination in lending. The couple had been denied a loan to build a home. The case involved claims under the federal Fair Housing Act and the Equal Credit Opportunity Act against both the lending institution that directly denied the loan and the secondary lender, who would have purchased the loan, if it had been made. At this federal jury trial, I presented both lay and expert testimony. I also argued procedural motions, including a motion regarding the improper striking of the lone African-American juror, which was granted. The jury ruled in favor of the defendants. While the matter was pending on appeal, it settled.

Date of representation: 1995

Court: United States District Court for the Northern
District of Alabama

Judge: Honorable Robert Probst

Co-counsel: Leslie Proll
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Opposing counsel: Curtis Wright (deceased)
Counsel for the Gadsden Corporation

Carlton King
Thomas A. Croft
King & Croft, LLP
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Counsel for the First National Bank of Gainesville

9. *Brown v. Board of Education of Topeka, Shawnee County, Kan.* 978 F.2d 585, (10th Cir. 1992), *rehearing denied* (Jan. 28, 1993), *cert. denied*, 509 U.S. 903 (1993) (no reported decision on district court remedial trial)

After a ruling from the United States Court of Appeals for the Tenth Circuit holding that further desegregation relief was required in the Topeka, Kansas schools, there was a trial on remedy before the United States District Court of Kansas. I, along with co-counsel, represented the plaintiff schoolchildren and parents. During the course of the remedial trial, I prepared and presented expert testimony on the proposed plan for the plaintiffs. The remedy ultimately implemented resulted in the school district being declared unitary in 1999, ending federal court supervision.

Date of representation: 1993 to 1994

Court: United States District Court for the District of
Kansas

Judge: Honorable Richard Rogers

Co-counsel: Christopher A. Hansen (retired)

Richard E. Jones
Jones & Jones
1503 S.E. Quincy Street
Topeka, Kansas 66612
(785) 215-9018

Counsel for defendant: Honorable Dan Biles
(formerly of Gates, Biles & Shields, P.A.)
Kansas Supreme Court
301 SW 10th Avenue
Topeka, Kansas 66612
(785) 296-2256

Honorable Gary Sebelius
(formerly of Wright, Henson, Somers,
Sebelius, Clark & Baker)
Magistrate Judge
U.S. District Court of Kansas
444 S.E. Quincy, Suite 475
Topeka, Kansas 66683
(785) 338-5480

10. *Ihler v. Chisolm*, No. ADV88-383 (filed May 16, 1988 in the District Court of the First Judicial District, Lewis and Clark County)

In 1988, twelve patients at the Montana State Hospital at Warm Springs filed a class action in state court, seeking damages and injunctive relief for civil rights violations related to the conditions in the hospital, primarily under 42 U.S.C. Section 1983. The court bifurcated the damages and the injunctive portions of the case. In May 1991, the judge held a three-week bench trial for the portion of the case seeking injunctive relief. During the trial, the court heard 35 witnesses and admitted over 100 exhibits. Working with co-counsel on behalf of the plaintiffs, I conducted the examination of two of the patient witnesses and also prepared the expert witness for plaintiffs on the hospital's seclusion and restraint practices. One of the critical issues in the case was whether patients at the facility were secluded and restrained excessively and improperly. The court ruled, *inter alia*, that the state facility was deficient in its use of seclusion and restraint and generally maintained patients in a more restrictive environment than necessary and ordered the hospital to correct the deficiencies. After the ruling on injunctive relief, the damages portion of the case settled.

Co-counsel: Leonard Rubenstein
(formerly of the Judge David L. Bazelon Center for Mental Health Law)
Johns Hopkins Center for Public Health and Human Rights
615 N. Wolfe Street
E7148
Baltimore, Maryland
(443) 287-8749

Ira Burnim
Judge David L. Bazelon Center for Mental Health Law
1101 15th Street, N.W., Suite 1212
Washington, D.C. 20005
(202) 467-5730

Allen P. Smith
(formerly of State Mental Disabilities Board of Visitors)
(no current contact information available)

Mary Gallagher
(formerly of State Mental Disabilities Board of Visitors)
Mary Gallagher Law Office
P.O. Box 1797
Missoula, Montana 59806
(406) 728-9215

Opposing counsel: P. Keith Keller (retired)
(formerly of Keller, Reynolds, Drake, Johnson & Gillespie, P.C.)

Kimberly Kradolfer (retired)
(formerly of State of Montana Agency Legal Services Bureau)

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to matters that have progressed to trial or have been handled at the appellate level, my legal career has been rather diverse. In my current position, as the chief lawyer for a municipality, the size of the city's legal docket necessitates the resolution of a large

number of cases, several hundred over the last five and a half years. This role also requires rendering legal advice on the scope and meaning of statutes and regulations and the review and approval of commercial transactions.

I understand that Congressional records may indicate incorrectly my registration as a lobbyist for the NAACP Legal Defense & Educational Fund, Inc. ("LDF"). Neither I nor LDF has uncovered any records registering me as a lobbyist, and I do not recall participating in any lobbying activities. On July 25, 2008, I filed a lobbying report to remove myself and others from the list of the organization's lobbyists, to correct any erroneous record of registration.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

From 1992 to 2000, I taught a course entitled, Race and Poverty Law: Constitutional Dimensions, at New York Law School. The course reviewed how the text of the U.S. Constitution and Supreme Court rulings interpreting it address issues of race and class. After a diligent search, I have not been able to locate the syllabus or syllabi used for this course.

Also, since 2012, I have been working with Yale Law School students, who are part of a clinic taught by Professor Heather Gerken, on matters related to the City of San Francisco and the City of New Haven. I meet weekly with the students and provide them direction on New Haven-related legal matters. There is no syllabus.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items

exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

Please see Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

At the present time, any case involving the government of the City of New Haven would present a potential, if not actual, conflict of interest for me, given my tenure as New Haven's Corporation Counsel. At the present time, I do not believe it appropriate for me to hear any cases involving the City of New Haven as a party.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will scrupulously avoid any conflict or appearance of a conflict of interest consistent with 28 U.S.C. Section 455 and the Code of Conduct for United States Judges. In making these determinations, I intend to seek guidance from and the wisdom of other members of the judiciary, to the extent appropriate and possible.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My legal career has been dedicated to public service. I have worked for two national civil rights organizations and served as a government attorney. In private practice, I continued to demonstrate an interest in and commitment to serving others. At the law firm of Wiggin and Dana, my work on the Supreme Court *amicus curiae* brief filed in the *Grutter v. Bollinger* and *Gratz v. Bollinger* cases was *pro bono*. I continued to work *pro bono* on the *Manning v. Hillsborough County School Board* case, including arguing before the Eleventh Circuit and filing a petition for certiorari with the U.S. Supreme Court, while there. Finally, I have served on the board of directors for organizations,

such as the Connecticut Food Bank and the International Center of New Haven (now the International Association).

Currently, I continue to contribute time to non-profit organizations, having recently joined the board of directors of the Connecticut Veterans Legal Center. In addition, my service on the ABA Standing Committee for *Amicus Curiae* Briefs involves regularly reviewing and editing briefs Supreme Court of the United States filed by the ABA's to ensure that they are consistent with ABA policy.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 3, 2014, I submitted an application to an advisory panel convened by Senators Richard Blumenthal and Christopher Murphy. On January 18, 2014, the advisory panel interviewed me in Hartford, Connecticut. On February 7, 2014, I interviewed with Senators Blumenthal and Murphy in Hartford, Connecticut. Since March 19, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 20, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 16, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2014

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Bolden, Victor A.	2. Court or Organization United States District Court for the District of Connecticut	3. Date of Report 06/16/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 06/16/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 05/29/2014
7. Chambers or Office Address 165 Church Street, 4th Floor New Haven, Connecticut 06510		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Board member	Connecticut Veteran's Legal Center
2. Treasurer	New Haven County Bar Association
3.	
4.	
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. 2005	NAACP Legal Defense and Educational Fund, Inc. Defined Benefit Pension Plan
2.	
3.	

FINANCIAL DISCLOSURE REPORT
 Page 2 of 7

Name of Person Reporting	Date of Report
Bolden, Victor A.	06/16/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*
A. Filer's Non-Investment Income
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2012	City of New Haven - salary	\$144,003.00
2. 2013	City of New Haven - salary	\$147,325.00
3. 2014	City of New Haven - salary	\$66,100.64
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)
☒ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)
☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Bolden, Victor A.	06/16/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☒ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Bolden, Victor A.	06/16/2014

VII. INVESTMENTS and TRUSTS — income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. BlackRock LifePath 2040 Portfolio	A	Dividend	K	T					
2. Fidelity Diversified International Fund	A	Dividend	K	T					
3. Fidelity Low-Priced Stock Fund	B	Int./Div.	K	T					
4. Fidelity Spartan 500 Index Fund	A	Int./Div.	K	T					
5. Fidelity Spartan 500 U.S. Bond Index Fund	A	Int./Div.	J	T					
6. Hartford Small Company Fund	A	Dividend	K	T					
7. MassMutual General Declared Rate Account	A	Interest	J	T					
8. MFS Research International Fund	A	Dividend	J	T					
9. PIMCO Total Return Fund	A	Dividend	J	T					
10. RidgeWorth Mid-Cap Value Equity Fund	B	Dividend	K	T					
11. T. Rowe Price Growth Stock Fund	A	Dividend	K	T					
12. T. Rowe Price International Stock Fund	A	Dividend	K	T					
13. T. Rowe Price Mid-Cap Value Fund	C	Dividend	M	T					
14. T. Rowe Price New America Growth Fund	D	Dividend	L	T					
15. T. Rowe Price New Era Fund	C	Dividend	L	T					
16. T. Rowe Price New Horizons Fund	D	Dividend	M	T					
17. T. Rowe Price Small-Cap Value Fund	B	Dividend	K	T					

1. Income Gain Codes:
(See Columns B1 and D4)
A = \$1,000 or less
F = \$50,001 - \$100,000
J = \$15,000 or less
N = \$250,001 - \$500,000
P1 = \$25,000,001 - \$50,000,000

2. Value Codes
(See Columns C1 and D3)
B = \$1,001 - \$2,500
G = \$100,001 - \$1,000,000
K = \$15,001 - \$50,000
O = \$500,001 - \$1,000,000
R = Cost (Real Estate Only)
V = Other

3. Value Method Codes
(See Column C2)
L = Book Value

C = \$2,501 - \$5,000
I11 = \$1,000,001 - \$5,000,000
L = \$50,001 - \$100,000
P1 = \$1,000,001 - \$5,000,000
P4 = More than \$50,000,000
S = Assessment
W = Estimated

D = \$5,001 - \$15,000
I12 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000
T = Cash Market

E = \$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Bolden, Victor A.	06/16/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Vanguard 500 Index Fund	A	Dividend	K	T					
19. J. P. Morgan Chase Accounts	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assumed W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				

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Name of Person Reporting	Date of Report
Bolden, Victor A.	06/16/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Bolden, Victor A.	06/16/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ Victor A. Bolden

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

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FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks			900	Notes payable to banks-secured (auto)		16	218
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		643	182	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		9	983
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned				Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		17	348				
Cash value-life insurance							
Other assets itemize:							
NAACP LDF pension plan		52	700				
				Total liabilities		26	201
				Net Worth		687	929
Total Assets		714	130	Total liabilities and net worth		714	130
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

<u>Listed Securities</u>	
BlackRock LifePath 2040 Portfolio	\$ 23,300
Fidelity Diversified International Fund	19,882
Fidelity Low-Priced Stock Fund	26,923
Fidelity Spartan 500 Index Fund	23,113
Fidelity Spartan U.S. Bond Index Fund	13,394
Hartford Small Company Fund	21,128
MassMutual General Declared Rate Account	7,661
MFS Research International Fund	13,789
PIMCO Total Return Fund	11,713
RidgeWorth Mid-Cap Value Equity Fund	16,866
T. Rowe Price Growth Stock Fund	26,913
T. Rowe Price International Stock Fund	29,996
T. Rowe Price Mid-Cap Value	102,022
T. Rowe Price New America Growth Fund	60,467
T. Rowe Price New Era Fund	52,453
T. Rowe Price New Horizons Fund	107,392
T. Rowe Price Small-Cap Value Fund	43,059
Vanguard 500 Index Fund	43,111
Total Listed Securities	<u>\$ 643,182</u>

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AFFIDAVIT

I, Victor Allen Bolden, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

June 16, 2014
(DATE)

Victor Bolden
(NAME)

Patricia A. Lane
(NOTARY) Term Exp. 12/31/15

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

David Jason Hale

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Western District of Kentucky

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: United States Attorney's Office for the Western District of Kentucky
717 West Broadway
Louisville, Kentucky 40202

Residence: Prospect, Kentucky

4. **Birthplace:** State year and place of birth.

1967; Fort Campbell, Kentucky

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1989 – 1992, University of Kentucky College of Law; J.D., 1992

1985 – 1989, Vanderbilt University; B.A., 1989

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2010 – Present, 1995 – 1999

United States Attorney's Office for the Western District of Kentucky
717 West Broadway

Louisville, Kentucky 40202
United States Attorney (2010 – Present)
Assistant United States Attorney (1995 – 1999)

1999 – 2010
Reed Weitkamp Schell & Vice PLLC
500 West Jefferson Street, Suite 2400
Louisville, Kentucky 40202
Member (partner) (2002 – 2010)
Counsel (1999 – 2002)

2003 – 2009
RWSCV Collection Corp.
500 West Jefferson Street, Suite 2400
Louisville, Kentucky 40202
Director (2003 – 2009)
Vice President (2003 – 2009)
(Entity associated with law firm partnership)

1992–1994, Summer 1991, Summer 1990
Brown, Todd & Heyburn (now Frost Brown Todd LLC)
400 West Market Street, Suite 3200
Louisville, Kentucky 40202
Associate (1992 – 1994)
Summer Associate (Summer 1991)
Summer Associate (Summer 1990) (Lexington, Kentucky office)

Summer 1991
Greenebaum Treitz (now dissolved)
Former address:
National City Tower
101 South Fifth Street
Louisville, Kentucky 40202
Summer Associate

Summer 1989
Miller, Griffin & Marks, PSC
271 West Short Street, Suite 600
Lexington, Kentucky 40507
Runner and office assistant

Other affiliations (uncompensated):

2010 – Present
Appalachia High Intensity Drug Trafficking Area
P.O. Box 5070

London, Kentucky 40745
Board of Directors

2008 – 2010
University of Kentucky College of Law
620 South Limestone
Lexington, Kentucky 40506
Visiting Committee

2003 – 2010
Kentucky Educational Television Louisville Regional Advisory Committee
600 Cooper Drive
Lexington Kentucky 40502
Member

1996 – 2010
Fern Creek Christian Church, Inc.
9419 Seatonville Road
Louisville, Kentucky 40291
Board Member (1996 – 2010)
Corporate Secretary (approximately 2000 – 2008)

2002 – 2009
Louisville Urban League
1535 West Broadway
Louisville, Kentucky 40203
Board of Directors (2002 – 2009)
Committee Chairman (approximately 2003)
Executive Committee (approximately 2005 – 2009)
Secretary of the Board (approximately 2006 – 2009)

Approximately 1994 – 2006
Kentucky YMCA Youth Association
P.O. Box 4285
Frankfort, Kentucky 40604
Board of Directors (approximately 1994 – 2006)

2001 – 2005
Kentucky Authority for Educational Television and Foundation
600 Cooper Drive
Lexington Kentucky 40502
Authority Board and Foundation Member (2001 – 2005)
Vice-Chair of Board and Foundation (2004 – 2005)
(Received per diem reimbursement for Authority Board, but no other compensation)

Approximately 1995 – 2001
Vanderbilt University Alumni Association
110 21st Avenue, Suite 1000
Nashville, Tennessee 37203
Louisville Chapter President

1993 – 1995 (approximately)
Kentucky/Southeast Indiana Chapter of the National Multiple Sclerosis Society
(f/k/a Louisville MS Society)
1201 Story Avenue, Suite 200
Louisville, Kentucky 40206
Director

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have never served in the military. I have registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Appalachia HIDTA Director's Award (2013)

AV Preeminent 5.0 out of 5 rating by Martindale-Hubbell (2008 – present)

Listing, *The Best Lawyers in America*, Commercial Litigation (2010 ed.)

Louisville *Defender* Professional Achievement Award (2010)

Named to Louisville *Business First* Forty Under 40 Emerging Young Leaders (2006)

Listing, *Chambers USA: America's Leading Lawyers for Business*, Kentucky, Commercial Litigation (2005 – 2010)

U.S. Attorney's Award for outstanding performance in assistance to victims/witnesses, U.S. Attorney's Office (1999)

Recipient, Boehl Stopher & Graves Scholarship, awarded following competitive selection to the University of Kentucky College of Law National Moot Court Team, for the academic year (1991 – 1992)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the

titles and dates of any offices which you have held in such groups.

American Bar Association (1992 – present) (with lapses)
 Federal Bar Association (1995 – present) (with lapses)
 Kentucky Bar Association (1992 – present)
 Young Lawyers Section executive committee (approximately 1998 – 1999)
 Louisville Bar Association (1992 – present) (with lapses)
 Sixth Circuit Judicial Conference, Life Member (2013 – present)
 The Law Club (2009 – present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Kentucky, 1992

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Sixth Circuit, 1992
 United States District Court for the Western District of Kentucky, 1992
 United States District Court for the Eastern District of Kentucky, 1992
 Supreme Court of Kentucky, 1992

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Appalachia High Intensity Drug Trafficking Area Board of Directors
 (2010 – Present)

Cincinnati Christian University President's Advisory Board (2007 – 2010)

Fern Creek Christian Church (1986 – 2012)
 Deacon (approximately 1996 – 2002)
 Board Member (1996 – 2010)
 Building Committee Chairman (approximately 2000 – 2003)
 Corporate Secretary (approximately 2000 – 2008)
 Elder (approximately 2002 – 2010)

The Jefferson Club (approximately 1999 – 2005)

Kentucky Authority for Educational Television and Foundation (2001 – 2005)
 Authority Board and Foundation Member (2001 – 2005)
 Vice-Chair of Board and Foundation (2004 – 2005)

Kentucky Educational Television Louisville Regional Advisory Committee
 (2003 – 2010)

Kentucky YMCA Youth Association Board of Directors
 (approximately 1994 – 2006)

The Law Club (2009 – present)

Leadership Kentucky (2002 – present) (with lapses)
 Participant (Class of 2002)

Louisville MS Society Board of Directors (approximately 1993 – 1995)

Louisville Urban League Board of Directors (2002 – 2009)
 Committee Chairman (approximately 2003)
 Executive Committee (approximately 2005 – 2009)
 Secretary of the Board (approximately 2006 – 2009)

Sixth Circuit Judicial Conference, Life Member (2013 – present)

University of Kentucky College of Law Alumni Association (1992 – present)
 (with lapses)

University of Kentucky College of Law (2008 – present)
 Visiting Committee (2008 – 2010)
 Emeritus Member (2010 – present)

Vanderbilt University Alumni Association (1989 – present) (with lapses)
 Louisville Chapter President (approximately 1995 – 2001)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national

origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above have ever discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

With John S. Reed, *Business Torts: A Fifty State Guide* (Kentucky chapter) (M. Daller ed., Aspen 2007, 2008, 2009, 2010). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

As the United States Attorney for the Western District of Kentucky, I co-sponsored the Kentucky Prescription Drug Abuse Summit in February 2012 with the United States Attorney for the Eastern District of Kentucky. In April 2012, we issued a summary report of the summit. Copy supplied.

Letters to the public to announce Louisville Urban League's employment and education initiatives (2004, 2005, 2006 and 2009). Although, as a board member of the Louisville Urban League, my name appeared on the letterhead, I did not sign the letters, and, to the best of my knowledge, I did not participate or consult in any way in their preparation, and the Board was never asked to vote on or approve their content. Copies supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have not kept a comprehensive list of all speeches, talks and presentations I have given. Below is my best effort to recreate my history of speaking engagements, drawing from my available files, calendars and the internet. It is possible that I have omitted presentations for which I did not retain records.

May 28, 2014: Speaker, Opening Remarks, Speaker Introductions, Panel Moderator, U.S. Attorney's PSN/PSC Training Conference, Bowling Green, Kentucky. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

April 29, 2014: Speaker, Keynote Remarks, West Kentucky Educational Cooperative Prescription Drug Abuse Symposium, Eddyville, Kentucky. Speech supplied.

March 27, 2014: Speaker, Opening Remarks, U.S. Attorneys' Statewide Health Care Fraud Task Force Conference, Frankfort, Kentucky. I delivered opening remarks at the start of the conference. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

February 19, 2014: Speaker, Opening Remarks, Preventing Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability (VALOR) training program, Jeffersontown, Kentucky. I delivered introductory remarks at the opening of officer safety training program sponsored by the U.S. Attorney's Office. My brief, unscripted remarks addressed the importance of such training, and thanked the event co-sponsors for partnering with the U.S. Attorney's Office. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

September 25, 2013: Moderator, Panel Discussion, Appalachian Regional Pill Abuse Summit, Johnson City, Tennessee. Notes supplied and video available at https://www.youtube.com/watch?v=Z692_ngZi5o.

September 9, 2013: Speaker, Opening Remarks, Annual Convention of the

Kentucky Sheriffs' Association, Sloan Convention Center, Bowling Green, Kentucky. I delivered brief, unscripted remarks at the opening of the convention. I thanked the sheriffs for their service, briefly mentioned areas of cooperation between sheriffs and federal law enforcement agencies, and highlighted training to be provided the convention attendees by the U.S. Attorney's Office. I have no notes, transcript or recording. The address of the Kentucky Sheriffs' Association is 2550 Ewing Road, Ewing, Kentucky 41039.

September 6, 2013: Guest Speaker, Marion County (Kentucky) Industrial Foundation Luncheon, Marion County Local Government Building, Lebanon, Kentucky. Speech supplied.

July 30, 2013: Speaker, Opening Remarks, 41st Annual Kentucky Association of Chiefs of Police Conference, Lexington, Kentucky. I delivered impromptu remarks at the opening of the conference. I have no notes, transcript or recording. The address of the Kentucky Association of Chiefs of Police is 2230 Deep Creek Road, Madisonville, Kentucky 42431.

July 25, 2013: Speaker, Remarks, Louisville Metro Criminal Justice Commission Meeting, Louisville, Kentucky. I discussed a recently announced joint federal and local law enforcement initiative with members of the Commission. I have no notes, transcript or recording. The address of the Louisville Metro Criminal Justice Commission is 514 West Liberty Street, Suite 106, Louisville, Kentucky 40202.

July 16, 2013: Speaker, Opening Remarks, State and Local Anti-Terrorism Training (SLATT) Program, Fort Knox Army Base, Kentucky. I delivered introductory remarks at the opening of an anti-terrorism training program sponsored by the U.S. Attorney's Office. My brief, unscripted remarks addressed the importance of coordination among local, state, and federal authorities, and the role of the U.S. Attorney's Office. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

May 20, 2013: Speaker, Opening Remarks, FBI Law Enforcement Executive Development Association (LEEDA) Annual Conference, Louisville, Kentucky. I delivered brief, unscripted remarks at the opening of the FBI LEEDA conference, welcoming attendees to Louisville, and highlighting the outstanding partnership between the U.S. Attorney's Office and the FBI Louisville Division. I have no notes, transcript or recording. The address of the FBI Law Enforcement Executive Development Association is 5 Great Valley Parkway, Suite 125, Malvern, Pennsylvania 19355.

May 13, 2013: Speaker, Opening Remarks, International Narcotics Interdiction Association Conference, Louisville, Kentucky. I delivered brief, unscripted remarks at the opening of the conference, welcoming attendees to Louisville, and

highlighting the role of the U.S. Attorney's Office in a collaborative law enforcement effort. I have no notes, transcript or recording. The address of the International Narcotics Interdiction Association is P.O. Box 1757, Spring Hill, Tennessee 37174.

April 17, 2013: Guest Speaker, Kentucky Coroners Conference, Louisville, Kentucky. Speech supplied.

February 28, 2013: Speaker, Assistant U.S. Attorney Retirement Dinner, Louisville, Kentucky. Outline supplied.

February 22, 2013: Speaker, Motion, Naturalization Ceremony, Louisville, Kentucky. My participation included making the formal motion for the U.S. District Court to administer the oath of citizenship to new citizens. Outline supplied.

December 19, 2012: Guest Speaker, Owensboro Rotary Club, Owensboro, Kentucky. Outline supplied.

November 28, 2012: Speaker, Opening and Concluding Remarks, Speaker Introduction, U.S. Attorneys' Statewide Health Care Fraud Task Force Conference, Frankfort, Kentucky. Although I have no notes, transcript or recording of the opening and concluding remarks, the speaker introduction is supplied.

November 1, 2012: Speaker, Keynote Remarks, FBI Citizens Academy Graduation, Louisville, Kentucky. Speech supplied.

October 30, 2012: Speaker, Opening Remarks and Speaker Introductions, U.S. Attorney's PSN/PSC Training Conference, Owensboro, Kentucky. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

October 23-24, 2012: Speaker, Opening Remarks and Panel Moderator, U.S. Attorney's Bank Secrecy Act Symposium, Louisville, Kentucky. Opening remarks supplied.

August 21, 2012: Guest Speaker, Elizabethtown Rotary Club, Elizabethtown, Kentucky. Outline supplied.

August 8, 2012: Speaker, Remarks, Kentucky Association of Chiefs of Police Conference, Bowling Green, Kentucky. Outline supplied.

August 6, 2012: Speaker, Remarks, Swearing-In Ceremony for Law Enforcement Coordinator Brett Hightower, Louisville, Kentucky. I delivered brief, unscripted

remarks. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

July 24, 2012: Speaker, Opening Remarks, State and Local Anti-Terrorism Training (SLATT) Program, Louisville, Kentucky. I delivered brief opening remarks prior to the start of anti-terrorism training sponsored by the U.S. Attorney's Office. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

June 18, 2012: Speaker, Remarks, Law Enforcement Service to Victims Award Ceremony, Louisville, Kentucky. Remarks supplied.

May 17, 2012: Speaker, Remarks, Visit to Fort Campbell with Assistant Attorney General for Civil Rights Thomas Perez, Fort Campbell, Kentucky. I participated in an outreach visit to Fort Campbell to discuss the ways in which the Department of Justice and the U.S. Attorney's Office protect the rights of active duty servicemembers pursuant to laws such as the Servicemembers Civil Relief Act of 2003, and the Uniformed Services Employment and Reemployment Rights Act (USERRA). I have no notes, transcript or recording. The address of Fort Campbell Office of Staff Judge Advocate is OSJA, HQ, 101st Airborne Division (AASLT) & Fort Campbell 127 Forrest Road, Fort Campbell, Kentucky 42223-5208.

May 15, 2012: Speaker, Opening Remarks, U.S. Attorneys' Statewide Health Care Fraud Task Force Conference, Frankfort, Kentucky. I delivered brief remarks highlighting the importance of collaboration among state regulators, private insurance carriers, and law enforcement, in the effort to address healthcare fraud. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

May 2, 2012: Speaker, Remarks, Retirement Ceremony for U.S. Magistrate Judge E. Robert Goebel, Owensboro, Kentucky. I delivered brief, unscripted remarks thanking Judge Goebel for his service. I have no notes, transcript or recording. The address of the U.S. District Court for the Western District of Kentucky is 601 West Broadway, Louisville, Kentucky 40202.

April 4, 2012: Speaker, Guest Speaker, Paducah Rotary Club, Paducah, Kentucky. Outline supplied.

March 23, 2012: Speaker, Brief Remarks, Jefferson County Sheriff's Office Annual Awards Banquet, Louisville, Kentucky. I delivered brief, unscripted remarks at an award banquet, thanking the awards recipients for their service and highlighting the collaboration between the Sheriff's Office and federal law enforcement agencies in Louisville. I have no notes, transcript or recording. The address of the Jefferson County Sheriff's Office is 531 Court Place, Sixth Floor, Louisville, Kentucky 40202.

February 24, 2012: Speaker, Motion, Naturalization Ceremony, Louisville, Kentucky. My participation included making the formal motion for the U.S. District Court to administer the oath of citizenship to new citizens. Template of oath supplied.

February 22, 2012: Speaker, Opening Remarks, Courthouse Ribbon Cutting Ceremony, Fort Campbell, Kentucky. I delivered brief remarks on the occasion of the opening of a new courthouse facility on post. I thanked the Army for the construction of the new building and highlighted the important collaboration between the Fort Campbell Office of the Staff Judge Advocate and the U.S. Attorney's Office. I have no notes, transcript or recording. The address of Fort Campbell Office of Staff Judge Advocate is OSJA, HQ, 101st Airborne Division (AASLT) & Fort Campbell 127 Forrest Road, Fort Campbell, Kentucky 42223-5208.

February 1, 2012: Speaker, Opening Remarks and Speaker Introductions, Kentucky U.S. Attorneys' Prescription Pill Summit, University of Kentucky Medical School, Lexington, Kentucky. Outline supplied.

November 20, 2011: Speaker, Brief Remarks, Retirement Ceremony for U.S. Magistrate Judge W. David King, U.S. Courthouse, Paducah, Kentucky. I delivered brief, unscripted remarks thanking Judge King for his service. I have no notes, transcript or recording. The address of the United States District Court for the Western District of Kentucky is 601 West Broadway, Louisville, Kentucky 40202.

November 15, 2011: Speaker, Opening Remarks and Speaker Introductions, State and Local Anti-Terrorism Training (SLATT) Seminar, Elizabethtown, Kentucky. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the U.S. Attorney's Office is 717 W. Broadway, Louisville, Kentucky 40202.

October 18, 2011: Speaker, Welcome and Concluding Remarks, U.S. Attorneys' Statewide Health Care Fraud Task Force Conference, Frankfort, Kentucky. I delivered brief remarks highlighting the importance of collaboration among state regulators, private insurance carriers, and law enforcement in the effort to address healthcare fraud. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

October 17, 2011: Speaker, Opening Remarks, Kentucky Narcotic Officers' Association Conference, Louisville, Kentucky. I delivered unscripted remarks at the opening of the conference, welcoming attendees to Louisville and highlighting the role of the U.S. Attorney's Office in narcotics cases. I have no notes, transcript or recording. The address of the Kentucky Narcotic Officers'

Association is 429 ½ East Tenth Avenue, Suite 1, Bowling Green, Kentucky 42101.

September 28, 2011: Speaker, Opening Remarks and Speaker Introduction, Civil Rights Training, Louisville, Kentucky. I delivered unscripted remarks welcoming local law enforcement officers to the U.S. Attorney's Office for a training symposium on federal civil rights enforcement. I also introduced the guest speaker. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

September 28, 2011: Speaker, Outreach Visit, Fort Knox Army post, Fort Knox, Kentucky. I participated in an outreach visit to Fort Knox with Assistant Attorney General for Civil Rights Thomas Perez to discuss ways in which the Department of Justice and the U.S. Attorney's Office protect the rights of active duty service-members pursuant to laws such as the Servicemembers Civil Relief Act of 2003, and the Uniformed Services Employment and Reemployment Rights Act (USERRA). While at Fort Knox we interacted with Army post leadership, the Staff Judge Advocate and enlisted soldiers from the various units based on post. I have no notes, transcript or recording. The address of Fort Knox Office of Staff Judge Advocate is OSJA, HQ U.S. Army Cadet Command & Fort Knox, Building 1310, Pike Hall, 50 Third Avenue, Suite 229, Fort Knox, Kentucky 40121.

July 25, 2011: Speaker, Introductory Remarks, Regional Organized Crime Information Center (ROCIC) Annual Summer Conference, Louisville, Kentucky. Introductory remarks supplied.

June 23, 2011: Speaker, Brief Remarks, Jefferson County Officers' Safety Meeting, Louisville, Kentucky. Because the materials used at this meeting are law enforcement sensitive, they are not supplied. The address of the U.S. Attorney's Office is 717 W. Broadway, Louisville, Kentucky 40202.

May 12, 2011: Guest Speaker, Kentucky Law Enforcement Council Board Meeting, Louisville, Kentucky. Outline supplied.

April 28, 2011: Guest Speaker, Law Day, Fort Knox, Kentucky. Speech supplied.

April 19, 2011: Speaker, Introductory Remarks and Speaker Introductions, U.S. Attorney's Purchase Area Law Enforcement Training Conference, Paducah, Kentucky. Notes supplied.

March 8, 2011: Speaker, Introductory Remarks, Second U.S. Attorneys' Statewide Health Care Fraud Task Force Conference, Frankfort, Kentucky. Notes supplied.

March 3, 2011: Panelist, Continuing Legal Education seminar regarding federal sentencing issues, Cincinnati, Ohio. I participated as a panelist along with two

federal judges and an assistant federal defender. As part of my remarks, I discussed the U.S. Attorney's Office process for prosecutors to obtain approval of a proposed plea agreement. I have no notes, transcript or recording, but press coverage is supplied. The address for the Cincinnati Bar Association is 225 East Sixth Street, Cincinnati, Ohio 45202.

February 25, 2011: Keynote Speaker, Judge Advocate General's (JAG) Corps Regimental Dining-In Event, Fort Knox, Kentucky. Speech supplied.

February 18, 2011: Speaker, Motion, Naturalization Ceremony, Louisville, Kentucky. My participation included making the formal motion for the U.S. District Court to administer the oath of citizenship to new citizens. Remarks supplied.

December 12, 2010: Speaker, Awards and Appreciation Ceremony for Clerk of Court, Louisville, Kentucky. I delivered brief, unscripted remarks at the send-off ceremony for the departing U.S. District Court Clerk. On behalf of the U.S. Attorney's Office, I thanked the Clerk for his service to the Court. I have no notes, transcript or recording. The address of the United States District Court for the Western District of Kentucky is 601 West Broadway, Louisville, Kentucky 40202.

November 1, 2010: Speaker, Welcome Remarks, Kentucky Narcotics Officers Association Conference, Louisville, Kentucky. Notes supplied.

October 7, 2010: Speaker, Continuing Legal Education Panel Discussion, Federal Bar Association Seminar, Louisville, Kentucky. Outline supplied.

September 29, 2010: Speaker, Brief Remarks, Police Executive Command Conference, Lucas, Kentucky. I delivered brief remarks on the role of the U.S. Attorney's Office to senior police department executives in a training seminar sponsored by the Kentucky Department of Criminal Justice Training. I have no notes, transcript or recording. The address of the Department of Criminal Justice Training is Funderburk Building, Eastern Kentucky University, 521 Lancaster Avenue, Richmond, Kentucky 40475.

September 21, 2010: Speaker, Opening Remarks, First U.S. Attorneys' Statewide Health Care Fraud Task Force Conference, Frankfort, Kentucky. Remarks supplied.

September 1, 2010: Speaker, Opening Remarks, Anti-Terrorism Advisory Committee Training conference, Louisville, Kentucky. I delivered brief opening remarks welcoming participants in the training sponsored by the U.S. Attorney's Office. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

June 29, 2010: Speaker, Opening Remarks, Crimes Against Children Training Seminar, Louisville, Kentucky. This seminar was sponsored by the U.S. Attorney's Office and the FBI Louisville Division. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

May 26, 2010: Speaker, Welcome Remarks, Anti-Terrorism Advisory Council Meeting, Louisville, Kentucky. In my welcome remarks I thanked participants for attending and participating. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 717 West Broadway, Louisville, Kentucky 40202.

June 2007, Co-presenter, National Business Institute CLE: Rules and Procedures for Federal Court Success, Louisville, Kentucky. CLE outline supplied.

As a college student, I was executive vice president of College Democrats of America in 1987 and the president in 1988. During this time I spoke at College Democrat meetings in Arizona, Tennessee and Washington, D.C., and to a convention of college newspaper editors in Washington, D.C. I do not recall the exact dates and I do not have notes, records or transcripts of the speeches.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches on publicly available electronic databases. In my official capacity as U.S. Attorney for the Western District of Kentucky, I occasionally give interviews to local radio, television and print media reporters. I do not recall all the interviews I have given or the dates on which I gave those interviews. The interviews have centered on particular cases my office has prosecuted during my term, law enforcement initiatives, community and law enforcement outreach initiatives, and Department initiatives as they have related to the Western District of Kentucky. I have located the following interviews, press conferences, and press releases listed below.

Interviews:

Andrew Wolfson, *E'town Chemo Doctors Under Investigation*, Courier-Journal, June 18, 2014. Copy supplied.

Jim Warren, *Ex-President of Lexington Glass Company Pleads Guilty to Wire Fraud in Fort Knox Case*, Herald-Leader, June 16, 2014. Copy supplied.

Untitled story regarding \$3.7 million settlement of claims against cancer clinic,

WAVE TV, June 5, 2014. Copy supplied.

Jeff D'Alessio, *E'town Medical Practice Fined Nearly \$3.8 Million*, Elizabethtown News-Enterprise, June 4, 2014. Copy supplied.

Man Sentenced for Violating Drug Trafficking, Gun Laws, KFVS, June 3, 2014. Copy supplied.

Brett Barrouquere, *USA Harvest Founder Pleads Guilty to Fraud*, Associated Press, June 3, 2014. Copy supplied.

Andrew Wolfson, *E-town Cancer Clinic Pays \$3.7 Million for Unneeded Chemo*, Courier-Journal, June 3, 2014. Copy supplied.

Charlie White, *DEA Agents Investigating Jeffersonville Doctor's Office*, Courier-Journal, April 24, 2014. Copy supplied.

Cedra Mayfield and Theo Keith, *Agents Serve Search Warrants at Two Medical Offices*, WAVE TV, April 23, 2014. Copy supplied.

FBI, DEA, Other Agencies Investigating Physicians Primary Care Locations, WLKY, April 23, 2014. Copy supplied.

Conlon, Kevin, *Kentucky Postal Worker Jailed for Stashing 44, 900 Pieces of Mail*, CNN, April 23, 2014. Copy supplied.

Joel Christie, *Lazy Mailman Sentenced to Six Months in Jail for Stashing 45,000 Letters in his Dead Mother's Basement to 'Speed Up His Route,'* Iowa News Day, April 23, 2014. Copy supplied.

Untitled story regarding execution of search warrants at physician offices. WDRB, April 23, 2014. Copy supplied.

Mark Wilson, *Former Postal Service Employee from Dawson Springs, Ky., Sentenced for Destroying, Hiding Mail*, Evansville Press, April 22, 2014. Copy supplied.

Andrew Wolfson, *Kentucky Mailman Hid Mail in Dead Mom's House*, Courier-Journal, April 22, 2014. Copy supplied.

Tom O'Neill and Andrew Wolfson, *Kentucky Harvest Food Charity Thriving Again*, Courier-Journal, April 16, 2014. Copy supplied.

Andrew Wolfson, *Former U of L Official Charged with Stealing \$2.8 Million*, Courier-Journal, April 3, 2014. Copy supplied.

Justin Story, *Former Pharmacy Employee Admits Guilt*, Bowling Green Daily News, April 2, 2014. Copy supplied.

Bill Sanders, *Former Taylor County Deputy Pleads Guilty*, WBKO TV, April 2, 2014. Copy supplied.

Untitled story regarding indictment of Debra Kessinger, WBKO TV, April 1, 2014. Copy supplied.

Untitled story regarding a Bowling Green man pleading guilty to cultivating marijuana inside Mammoth Cave National Park, MGN Online, April 1, 2014. Copy supplied.

Former Ky. Deputy Sheriff Pleads Guilty to Anabolic Steroid Distribution, FOX19 Cincinnati, April 1, 2014. Copy supplied.

Bill Estep, *Russell County Company Pleads Guilty to Contraband-Cigarettes Charges*, Herald-Leader, April 1, 2014. Copy supplied.

Young Pleads Guilty in Federal Court to Numerous Charges, Glasgow Daily Times, March 19, 2014. Copy supplied.

Amber Ruch, *KY Man Pleaded Guilty to Trying to Sell 400 Lbs. of Marijuana*, KFVS, February 21, 2014. Copy supplied.

Andrew Wolfson, *Fort Knox Sergeant Guilty of Taking \$57K to Help Steal Fuel in Afghanistan*, Courier-Journal, February 19, 2014. Copy supplied.

Andrew Wolfson, *Louisville Executive to Pay \$1 Million over Inflated Medicare claims*, Courier-Journal, January 10, 2014. Copy supplied.

Andrew Wolfson, *Bardstown Pharmacy Owner Sentenced for Health-care Fraud*, Courier-Journal, October 1, 2013. Copy supplied.

Drew Douglas, *National Night Out*, WLKY TV, August 6, 2013. Copy supplied.

Andrew Wolfson, *Violent Crimes Sent to Federal Court to Hammer Accused Gun-Toting Criminals*, Courier-Journal, July 4, 2013. Copy supplied.

'Project Recoil' New Initiative to Catch Violent Crime Offenders, WHAS-TV, July 3, 2013. Video recording available at:
<http://www.whas11.com/news/local/Project-Recoil-aims-to--214198101.html>.

State, Feds to Discuss Violent Crime Crackdown, WLKY-TV, July 3, 2013. Video available at: <http://www.wlky.com/news/local-news/louisville-news/state->

feds-to-discuss-violent-crime-crackdown/-/9718340/20819344/-/g7kvhsz/-/index.html.

New Violent Crime Unit Maximizes Penalties for Criminals, WDRB-TV, July 3, 2013. Video supplied.

Andrew Wolfson, *University of Louisville Hospital to Pay \$2.8 Million Settlement Over Alleged Medicare Fraud*, Courier-Journal, July 1, 2013. Copy supplied.

U.S. Attorney Removed from Sen. Mitch McConnell Recording Case, Courier-Journal, June 21, 2013. Copy supplied.

Manu Raju and John Bresnahan, *Mitch McConnell Bugging*, Politico, June 21, 2013. Copy supplied.

Brett Barrouquere, *2 Eastern Livestock Officials Sentenced to Prison*, Associated Press, May 22, 2013. Copy supplied.

Justin Story, *Eastern Livestock Former Official Get Prison Sentences*, Bowling Green Daily News, May 22, 2013. Copy supplied.

Former McMahan Fire Chief Paul Barth Pays Out More to Crusade for Children, Courier-Journal, April 13, 2013. Copy supplied.

Randy Patrick, *Crume Owner Pleads Guilty to Fraud*, Kentucky Standard, March 20, 2013. Copy supplied.

Man Gets Three Years in Prison for Real Estate Scheme, News and Tribune, February 10, 2013. Copy supplied.

Carol Cratt, *Iraqi Men Living in Kentucky go to Prison for Plot to Help al Qaeda*, CNN, January 30, 2013. Copy supplied.

Justin Story, *Two Get Prison in Terrorism Case*, Bowling Green Daily News, January 30, 2013. Copy supplied.

Michael Gossum, *Both Terrorists Sentenced In U.S. District Court*, WBKO TV, January 30, 2013. Copy supplied.

Sentencing of Alwan and Hammadi, WBKO TV, January 30, 2013. I have been unable to obtain a copy.

Justin Story, *Attorney Calls for Reduced Sentence*, Bowling Green Daily News, January 29, 2013. Copy supplied.

Jim Williams, Radio Interview Related to Alwan and Hammadi Sentencing, 84WHAS Radio, January 29, 2013. I have been unable to obtain a copy.

Jackson Purchase Medical Center, Paducah Sun, January 18, 2013. Copy supplied.

Paul Barth's Home Sale to Go to Restitution, WDRB News, January 16, 2013. Copy supplied.

Paul Barth Crusade for Children, Courier-Journal, January 16, 2013. Copy supplied.

Bullitt, Jefferson Residents Found Guilty in Oxycodone Case, Pioneer News, January 10, 2013. Copy supplied.

David A. Mann, *Feds Settle With Sleep Medicine Center*, Business First, January 3, 2013. Copy supplied.

Andrew Wolfson, *Two Brothers Convicted of Supplying Mexican Cartel Cocaine to Louisville Drug Ring*, Courier-Journal, December 16, 2012. Copy supplied.

Feds: Embezzler Bought Home, Evansville Courier & Press, November 23, 2012. Copy supplied.

Feds: Paul Barth on a Short Leash, Courier-Journal, November 22, 2012. Copy supplied.

Prosecutors Just Learned of Crusade for Children Embezzler Paul Barth's Property Transactions, Courier-Journal, November 21, 2012. Copy supplied.

James Mayes, *Officials Stress Working Together*, Owensboro Messenger-Inquirer, October 31, 2012. Copy supplied.

Law Enforcement Training Session, WFIE Evansville, October 30, 2012. I have been unable to obtain a copy.

Roger Alford, *Obama Administration Extend Appalachia's Boundaries into Hardin County*, Associated Press, October 5, 2012. Copy supplied.

Announcement of DEA Take Back In Conjunction with Warren County And Bowling Green City Schools, WBKO TV, September 25, 2012. I have been unable to obtain a copy.

Bill Estep, *Russell Springs Man Accused of Selling Cigarettes Without Paying Taxes*, Herald-Leader, September 13, 2012. Copy supplied.

Jenna Mink, *Officials Take Another Step in Their Fight Against Abuse*, Bowling Green Daily News, September 12, 2012. Copy supplied.

Announcement of New High Intensity Drug Trafficking Area Program in Hardin County, WDRB-TV, August 29, 2012. Copy supplied.

White House Puts Hardin County in Drug Initiative, SFGate, August 29, 2012. Copy supplied.

Carla Jimenez, *Local Agencies, Feds Team Up to Break Up Drug Rings*, Kentucky New Era, August 24, 2012. Copy supplied.

Justin Story, *Hammadi Pleads Guilty*, Bowling Green Daily News, August 22, 2012. Copy supplied.

Andrew Wolfson, *Iraqi Pleads Guilty to Terrorism*, Courier-Journal, August 22, 2012. Copy supplied.

Iraqi Pleads Guilty in U.S. to Supporting Insurgents, Associated Press, August 22, 2012. Copy supplied.

Brett Barrouquere, *Iraqi Man Pleads Guilty to Conspiring To Send Weapons, Money, Explosives To Al-Qaida in Iraq*, Associated Press, August 22, 2012. Copy supplied.

David Bryant, *U.S. Attorney Announces Arrests and Successful Prosecutions*, SurfKY News, August 22, 2012. Copy supplied.

Police Make Dent in Hopkinsville Drug Trade, News Channel 5, August 22, 2012. Copy supplied.

Kentucky Press Conference to Announce Results of Investigation into Drug Trafficking and the Resulting Arrests, Nashville TV Station, August 22, 2012. I have been unable to obtain a copy.

U.S. Attorney for Western District David Hale Makes Major Announcement, WHOP AM-FM Radio, August 22, 2012. Copy of online story supplied.

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Justin Story, *Retired Police Captain to be Liaison for Attorney's Office*, Bowling Green Daily News, August 8, 2012. Copy supplied.

Michigan Man Convicted of Embezzling From Louisville Investors, Courier-Journal, July 11, 2012. Copy supplied.

Andrew Wolfson, *Woman Sentenced for Embezzling from U of L*, Courier-Journal, July 10, 2012. Copy supplied.

Paul Barth Receives Prison Time for Thefts, WHAS-11 News, June 21, 2012. Video available at: <http://www.whas11.com/outbound-feeds/yahoo-news/Fmr-McMahan-fire-chief-accused-of-embezzlement-expected-to-change-plea-159230135.html>.

Former McMahan Fire Chief Paul Barth Accepts Plea Deal, WLKY News, June 21, 2012. Video available at: <http://www.wlky.com/news/local-news/louisville-news/Former-McMahan-fire-chief-Paul-Barth-accepts-plea-deal-/9718340/15193496/-/99ydnk/-/index.html>.

Leitchfield Man Receives 10-Year Prison Sentence in Federal Child Exploitation Case, Grayson County News Gazette, June 23, 2012. Copy supplied.

Paul Barth Receives Prison Time for Thefts, WHAS-TV, June 21, 2012. Video available at: <http://www.whas11.com/outbound-feeds/yahoo-news/Fmr-McMahan-fire-chief-accused-of-embezzlement-expected-to-change-plea-159230135.html>.

Todd Faulkner, *Kerr & Wilson Sentenced to Time in Prison*, WPSD Local, June 7, 2012. Video supplied.

Glasgow Tax Preparer Indicted, Arraigned, Glasgow Daily Times, April 27, 2012. Copy supplied.

Tony Cruise, Radio interview related to DEA Take-Back Initiative, 84WHAS Radio, April 25, 2012. I have no copy, transcript or recording of the interview.

JCPS, U.S. Attorney Team Up on Drug Take-Back Initiative, April 23, 2012. Copy supplied.

Laura Ungar, *Disposal of Old Medications Urged*, Courier-Journal, April 23, 2012. Copy supplied.

Daniel Fitzgerald, *Former JL French Manager Pleads Guilty*, Metal Bulletin Daily Alerts, April 6, 2012. Copy supplied.

Kevin Eigelbach, *Louisville Man Sentenced to Two Years for Mortgage Fraud*, Business First, April 6, 2012. Copy supplied.

Sarah Bennett, *Elizabethtown Opens 24-hour Prescription Disposal Site*, The News-Enterprise, March 29, 2012. Copy supplied.

Rich Miller, *Cory George Pleads Guilty to Fraud Charges; Some Elderly Residents Lost Life Savings*, News 14, March 27, 2012. Copy supplied.

Rebecca Morris, *County Man Pleads Guilty to Child Crimes*, Grayson County News Gazette, March 24, 2012. Copy supplied.

Former Deputies Sentenced to 50 Months Each, Paducah Sun, March 7, 2012. Copy supplied.

2 Ex-Deputies Sentenced to 4 Years in Prison, Associated Press, March 7, 2012. Copy supplied.

Susan Tebben, *Glasgow Man Indicted on Federal Charges*, Glasgow Daily Times, February 16, 2012. Copy supplied.

Sheldon S. Shafer, *Two New Buildings for Federal Agencies Near Broadway Now Occupied*, Courier-Journal, February 2, 2012. Copy supplied.

Keith Lawrence, *Mayfair Settles U.S. Suit*, Owensboro Messenger-Inquirer, February 2, 2012. Copy supplied.

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O.J. Stapleton, *A Look Back at the Big Events in Logan*, News-Democrat & Leader, January 4, 2012. Copy supplied.

Radio Interview Related to Kentucky Prescription Drug Summit, WKYU-FM Radio, January 30, 2012. I have no copy, transcript or recording of the interview.

Alex Slitz, *Terror Suspect Pleads Guilty*, Bowling Green Daily News, December 17, 2011. Copy supplied.

Waad Alwan Guilty Plea, WBKO TV, December 16, 2011. I have no copy, transcript or recording of the interview. A copy of the notes I utilized in the interview is supplied.

Iraqi Admits Trying to Send Weapons to al-Qaida, Courier-Journal, December 16, 2011. Copy supplied.

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Iraqi Pleads Guilty to Trying to Assist Al-Qaida, Associated Press, December 16, 2011. Copy supplied.

Bruce Schreiner, *Iraqi Man Changes Plea in Kentucky, Admits Trying to Send Weapons, Cash to al-Qaida*, Canadian Press, December 16, 2011. Copy supplied.

Justin Story, *Funds for FY Total Excess of \$23M*, Bowling Green Daily News, November 21, 2011. Copy supplied.

Andrew Wolfson, *Former Bookkeeper Charged with Embezzling \$200,000 from Little Sisters for the Poor*, Courier-Journal, November 16, 2011. Copy supplied.

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Barry Wright, *Multiple Arrests Made in Drug Investigation Case*, West Kentucky Star, October 14, 2011. Copy supplied.

Report on Results of Two Year-Long Investigation Into Drug Trafficking And The Resulting Arrests, WPSD-TV, October 13, 2011. Video supplied.

Louisville Doctor Agrees to \$350,000 Payment in Medicare Overbilling Charge, Courier-Journal, September 27, 2011. Copy supplied.

Bill Estep, *Marion County Deputy Jailers Accused of Providing Contraband to Inmates*, Herald-Leader, September 22, 2011. Copy supplied.

Andrew Wolfson, *Oil Promoter Gets 4-Year Prison Term*, Courier-Journal, September 20, 2011. Copy supplied.

Sean Davidson, *Former J.L. French Manager Indicted*, American Metal Market, September 17, 2011. Copy supplied.

Cherry Pleads Guilty, is Ordered to Pay Fines in Dove-Hunting Case, Bowling Green Daily-News, August 26, 2011. Copy supplied.

Eastview Man Found Guilty of Child Porn Charges, Hardin County News – Enterprise, July 1, 2011. Copy supplied.

Andrew Wolfson, *Terror Trials Not a Risk, Official Says*, Courier-Journal, June 18, 2011. Copy supplied.

Andrew Robinson, *Senator Calls for Action*, Bowling Green Daily News, June 18, 2011. Copy supplied.

Andrew Wolfson, *U.S. Attorney Says Civilian Courts Pose No Security Risk in Terror Trials*, Courier-Journal, June 17, 2011. Copy supplied.

Iraqi Terrorism Suspects Waive Detention Hearing in Kentucky, Courier-Journal, June 9, 2011. Copy supplied.

Andrew Wolfson, *Case Against Iraqi Refugees in Kentucky Labeled Unique, Past Terror Prosecutions Were Outside U.S.*, Courier-Journal, June 8, 2011. Copy supplied.

Renee Montagne, *Terrorism Case Exposes Gap in Refugee Screening*, National Public Radio Morning Edition, June 8, 2011. Copy supplied and audio is available at <http://www.wbur.org/npr/137033910/terrorism-case-exposes-gaps-in-refugee-screening>.

Deborah Highland, *Terrorism Arrests in Bowling Green: Case Shows Gaps in Screening Both Suspects Able to Gain Legal Entry into U.S. Despite Arrests in Iraq*, Bowling Green Daily News, June 1, 2011. Copy supplied.

Television Interview related to Alwan and Hammadi Indictments, WHAS-11, June 1, 2011. I have no copy, transcript or recording of the interview.

Television Interview related to Alwan and Hammadi Indictments, WDRB, June 1, 2011. I have no copy, transcript or recording of the interview.

Television Interview related to Alwan and Hammadi Indictments, WAVE-3, June 1, 2011. I have no copy, transcript or recording of the interview.

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Andrew Wolfson, *2 Iraqi Refugees Indicted on Terrorism Charges in Kentucky*, Courier-Journal, June 1, 2011. Copy supplied.

Mike Columbo, Television Interview related to Federal Charges Against Alwan and Hammadi, WHAS-11, May 31, 2011. I have no copy, transcript or recording of the interview.

Maira Ansari, Television Interview related to Federal Charges Against Alwan and Hammadi, Wave-3, May 31, 2011. I have no copy, transcript or recording of the interview.

Deborah Highland, *Bowling Green Iraqis Face Terrorism Charges*, Bowling Green Daily News, May 31, 2011. Copy supplied.

Shelley Byrne, *Police Training Focuses on Collaboration*, Paducah Sun, April 20, 2011. Copy supplied.

O.J. Stapleton, *Lusk Takes Deal with Feds – Ex-Priest will get 10 Years in Prison*, News-Democrat & Leader, April 19, 2011. Copy supplied.

Valarie Honeycutt Spears, *Federal Prosecutors Ask For Help in Pursuing Nursing Home Cases*, Lexington Herald-Leader, March 9, 2011. Copy supplied.

Chris Taylor, *Hancock Named Special Assistant U.S. Attorney*, WKMS, January 6, 2011. Copy supplied.

Dani Palmer, *BRIEFS: Bombmaker Faces 12 Month Term*, Evansville Courier & Press, December 11, 2010. Copy supplied.

Glasgow Man Receives 12 Years, Glasgow Daily Times, November 10, 2010. Copy supplied.

Paula Burba, *Assistant U.S. Attorney Philip Chance Dies*, Courier-Journal, October 10, 2010. Copy supplied.

Patrick Howington, *Former Humana Employee Charged with Misusing Patient Information*, Courier-Journal, August 23, 2010. Copy supplied.

Andrew Wolfson, *Snyder Gets 8-Month Sentence*, Courier-Journal, August 17, 2010. Copy supplied.

Andrew Wolfson, *Karen Sypher Trial Prosecutors Win with Understated Delivery*, Courier-Journal, August 6, 2010. Copy supplied.

Soldier Indicted on Gun, Explosives Charges, Leaf-Chronicle, June 24, 2010. Copy supplied.

Katie Mulvaney, *Former URI Education School Chief Sentenced for Embezzling Funds*, Providence Journal, May 18, 2010. Copy supplied.

Louisville Lawyer Who Rented Dead Man's Condo Pleads Guilty, Courier-Journal, May 18, 2010. Copy supplied.

Felner Sentenced to 63 Months in Prison, Business First, May 17, 2010. Copy supplied.

Andrew Wolfson, *Hale Confirmed for U.S. Attorney*, Courier-Journal, May 1, 2010. Copy supplied.

Andrew Wolfson, *Two U.S. Attorneys Confirmed for Kentucky*, Courier-Journal, April 30, 2010. Copy supplied.

Jack Brammer, *No Investigation on Hiring, Raises*, Herald-Leader, January 17, 2008. Copy supplied.

Stephanie Steitzer, *Treasurer Rejects Firing Request*, Courier-Journal, October 13, 2007. Copy supplied.

Jack Brammer, *A Fresh Start, 'Unbridled Cleanup' of Government*, Lexington Herald-Leader, May 3, 2007. Copy supplied.

Peter Smith, *Governor Hopeful Redefines 'Values' Vote*, Courier-Journal, March 5, 2007. Copy supplied.

Richelle Hickman, *David J. Hale*, Louisville Business First, September 29, 2006. Copy supplied.

James Carroll, *Iraq Veteran Plans to Run against Northup*, Courier-Journal, December 15, 2005. Copy supplied.

Tom Loftus, *E. Kentucky Road-Work Companies Settle Suit*, Courier-Journal, November 1, 2005. Copy supplied.

Kim Wessel, *Tow-Firm Owner once Pretended to be DEA Agent*, Courier-Journal, December 20, 1997. Copy supplied.

Press Conferences:

On July 3, 2013, I held a press conference in the U.S. Attorney's Office in Louisville. The event was to announce "Project Recoil," a new, joint federal and local law enforcement initiative. Copy of press announcement supplied.

On October 23, 2012, I spoke at the Pre-Election Fraud Press Conference in the state capitol in Frankfort, Kentucky. Other participants included the Kentucky Secretary of State, the U.S. Attorney for the Eastern District of Kentucky, and the Commissioner of the Kentucky State Police. The event was to announce coordinated law enforcement efforts to discourage election fraud. I have no notes, transcript or recording.

On October 4, 2012, I participated in a press conference at the Elizabethtown Police Department in Elizabethtown, Kentucky, to announce that Hardin County, Kentucky had received designation as a High Intensity Drug Trafficking Area

(HIDTA) by the Office of National Drug Control Policy. Remarks to press supplied.

On September 25, 2012, I held a press conference at the Bowling Green Police Department, in Bowling Green, Kentucky, to announce a joint federal and local initiative to make parents of schoolchildren aware of the DEA prescription pill take-back event. Notes supplied.

On August 22, 2012, I held a press conference in Hopkinsville, Kentucky, to announce the results of a joint federal and local law enforcement initiative. Remarks to press supplied.

On April 23, 2012, I held a press conference at the headquarters of the Jefferson County School Board to announce a joint federal and local initiative to make parents of schoolchildren in Louisville aware of the DEA prescription pill take-back event. Remarks to press supplied.

On March 28, 2012, I participated in a press conference in Elizabethtown, Kentucky, to discuss efforts by the Elizabethtown Police Department to raise awareness of prescription pill abuse. I have no notes, transcript or recording.

On October 13, 2011, I held a press conference in Paducah, Kentucky to announce the results of a joint federal and local law enforcement initiative. Remarks to press supplied.

On June 17, 2011, I held a press conference to discuss the charges in *United States v. Alwan and Hammadi*. Remarks to press supplied.

Press Releases:

In an effort to keep the public informed of the work done by the United States Attorney's Office, the office issues press releases on matters routinely. I have supplied a list that represents what I believe to be a complete list of press releases that have been released during my tenure as United States Attorney, as well as copies of those press releases.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
 - i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
 - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify

each such case, and for each provide the following information:

I have never held judicial office.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I was appointed as the United States Attorney for the Western District of Kentucky on April 30, 2010, by President Barack Obama.

On June 13, 2001, Kentucky Governor Paul E. Patton appointed me to a four-year term on the Kentucky Authority for Educational Television (KET), the oversight board of Kentucky's public television network. I served until the completion of my term in 2005.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have volunteered on a number of political campaigns in Kentucky. I generally served as an advisor and, on occasion, co-hosted fundraisers. Campaigns where I served in this role include Ben Chandler for Congress (2008, 2006, 2004), Jonathan Miller for Governor (2007), Ben Chandler for Governor (2003), Jonathan Miller for State Treasurer (2003, 1999), and John Y. Brown for Secretary of State (1995). I also served as a volunteer lawyer for the Ben Chandler for Governor campaign in 2003. In that capacity I represented the

campaign in a single matter related to a routine post-campaign audit by the Kentucky Registry of Election Finance.

When I was in college, I was president of the College Democrats of America in 1988, and executive vice president in 1987. At that time, the College Democrats of America was affiliated with the Democratic National Committee. To the best of my recollection and records, I do not believe I was directly involved in campaign work through this organization.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a judicial law clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1992 – 1994

Brown, Todd & Heyburn (now Frost Brown Todd LLC)
400 West Market Street, Suite 3200
Louisville, Kentucky 40202
Associate Attorney

1999 – 2010

Reed Weitkamp Schell & Vice PLLC
500 West Jefferson Street, Suite 2400
Louisville, Kentucky 40202
Member (Partner) (2002 – 2010)
Counsel (1999 – 2002)

1995 – 1999, 2010 – Present

United States Attorney's Office for the Western District of Kentucky
717 West Broadway
Louisville, Kentucky 40202
United States Attorney (2010 – Present)
Assistant United States Attorney (1995 – 1999)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

When I began practicing as an associate with Brown, Todd & Heyburn in 1992, I was assigned to the litigation section of the firm, where I worked on a variety of matters including insurance defense, product liability defense, business disputes and some criminal matters. My work was largely that of a typical litigation associate in a large firm: legal research, drafting, and reviewing and preparing documents produced in discovery. I participated in numerous depositions, court hearings, and trial preparation. I handled approximately three small state court trials.

My practice changed significantly when I began work as an Assistant U.S. Attorney in 1995. While in the U.S. Attorney's Office for the Western District of Kentucky, I worked in both the civil and criminal divisions. During my first year in the U.S. Attorney's Office, I was largely assigned cases from the civil division. I handled federal program foreclosures, Social Security disability appeals, Federal Tort Claims Act matters, and affirmative civil enforcement cases. I also worked with the U.S. Department of Labor on a disputed union election case. My civil work included all manner of pre-trial discovery and motion practice. Beginning in 1996, I began to carry a significant criminal caseload. My criminal trial practice began by second-chairing a robbery/racketeering trial and a gambling/money laundering trial. Thereafter, I was responsible for a number of general crimes cases from pre-indictment investigation, pre-trial motion practice through trials, plea hearings, sentencing hearings and appeals. I tried bank robbery, drug and illegal firearm, and counterfeiting cases to verdict. I also handled fraud, violent crime, identity theft and child exploitation cases. I was also afforded the opportunity to argue three cases before the U.S. Court of Appeals for the Sixth Circuit.

In October 1999, I left the U.S. Attorney's Office to join Reed Weitkamp Schell & Vice PLLC, as a litigator. My work at Reed was less trial-intensive than was my service in the U.S. Attorney's Office. I generally represented businesses and business owners in contractual and other disputes. In addition to business and contractual disputes, I worked on a variety of cases, including antitrust matters, representation of a disability

insurance carrier, professional malpractice matters, employment litigation, and state constitutional and regulatory matters. Most of the work I did while at Reed was in Kentucky state and federal courts.

In May 2010, I became the United States Attorney for the Western District of Kentucky. Since then, the nature of my work has been multifaceted. I supervise all federal criminal investigations, prosecutions and appeals in the district; all affirmative and defensive civil litigation in which the United States is a party; all administrative, personnel, and operational activity of the U.S. Attorney's Office; all federal, state and local law enforcement coordination; all community and media outreach; and all coordination with the Department of Justice. My responsibilities as United States Attorney include working with the 92 other United States Attorneys, the Executive Office for United States Attorneys, and the Department of Justice to develop strategies to effectively address the priorities of the Department and the Western District of Kentucky.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As the United States Attorney, and as an Assistant United States Attorney, my only client has been the United States government. Currently, I have responsibility over all federal criminal investigations and prosecutions, as well as responsibility to represent the United States in all civil cases, in the Western District of Kentucky. As an Assistant United States Attorney, I practiced in both civil and criminal litigation.

At Brown, Todd & Heyburn, I represented insurance companies, manufacturing businesses, franchise business owners and banks.

At Reed Weitkamp Schell & Vice PLLC, my practice included representation of pharmaceutical manufacturers; business entities with mineral interests in disputes with leaseholders; physicians and medical practice groups in contract and other business disputes; and an executive in a dispute among shareholders following the sale of a closely held healthcare company. I also routinely represented a life insurance company and a financial institution.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Since beginning the practice of law in 1992, approximately 90% of my practice has been in litigation. From 1992 to 1994, I appeared in court occasionally as a litigation associate in a large law firm. From 1995 to 1999, I worked as an Assistant U.S. Attorney and frequently appeared in court for hearings and trials.

From 1999 to 2010, while in private practice, I appeared in court occasionally. Since 2010, as United States Attorney, I have occasionally attended court hearings and trials. I currently supervise litigation that takes place almost entirely in federal courts. While in private practice from 1999 to 2010, approximately 50% of my practice was before state courts, other courts and administrative agencies. Although the majority of my practice has been in criminal litigation, approximately 90% of my work was in civil proceedings from 1999 to 2010.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 98% |
| 2. state courts of record: | 2% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 20% |
| 2. criminal proceedings: | 80% |

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 14 cases to verdict. I was sole counsel in eight trials, co-counsel in four trials and associate counsel in two trials.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 0% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never appeared before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- 1) *United States v. Harris*, Case No. 96-CR-0024 (W.D. Ky. 1996); *aff'd*, 238 F.3d 777 (6th Cir. 2001).

This was a case about a murder that occurred on the Fort Campbell Army post. In 1996, the defendants attempted to rob two active duty soldiers outside a convenience store on the post at gunpoint. During the course of the robbery, the gun went off, striking one of the soldiers, who died a short time later from the wound. The defendants were minors at the time of the crime. The first significant issue in the case involved the transfer of the defendants from juvenile to adult status. This step involved an interim appeal to the U.S. Court of Appeals for the Sixth Circuit. I handled the oral arguments on this interim appeal. (I have been unable to obtain records of the appeal other than the Sixth Circuit docket numbers, 97-5809 and 97-5810.) After successfully litigating the transfer issue in the Sixth Circuit, I worked at all steps of the pretrial preparation of the case. The trial began in U.S. District Court in Paducah, Kentucky, in October 1998. After seating a jury, the defendants pleaded guilty. In June 1999, I was responsible for witness testimony and arguments during a contested sentencing hearing. The defendants received 480-month sentences. The case was subsequently appealed to the Sixth Circuit which upheld the sentences.

Dates of representation: 1996 – 1999

Presiding Judge: Senior U.S. District Judge Edward H. Johnstone

Co-counsel:

Former Assistant U.S. Attorney A. Duane Schwartz (retired)

Counsel for Defendant Harris:

Scott T. Wendelsdorf
Western Kentucky Federal Defender, Inc.
629 Fourth Avenue
Louisville, Kentucky 40202
502-584-0525

Counsel for Defendant Gaines:

Len W. Ogden, Jr.
111 South Fourth Street

Paducah, Kentucky 42001
270-444-7575

- 2) *United States v. Brooks*, Case No. 97-CR-0024 (W.D. Ky. 1997), *aff'd*, 209 F.3d 577 (6th Cir. 2000).

This case involved charges of armed bank robbery and illegal firearms possession. The defendants, along with other accomplices, robbed approximately eight banks before their capture. The robberies were particularly violent, with robbers jumping on teller counters and wielding a sawed-off shotgun. I was the lead AUSA during the investigation and pretrial phase of the case. The defendants left Louisville after robbing over \$300,000 from area banks, and were not located for several weeks. Initially, defendants Brooks and Marks pleaded guilty, along with three other accomplices. After pleading guilty, the defendants successfully petitioned the court to withdraw their plea agreements and proceed to trial. I tried Brooks and Marks along with another AUSA, dividing the jury trial responsibilities between us. The case was evidence-intensive, involving forensic evidence developed by the FBI laboratory, witness evidence, cooperating witnesses and physical evidence. Brooks and Marks were convicted and subsequently received long sentences. On appeal, the Sixth Circuit upheld the convictions and sentences.

Dates of representation: 1997 – 1999

Presiding Judge: U.S. District Judge Thomas B. Russell

Co-Counsel at Trial:

Former Assistant U.S. Attorney Michael Mazzoli
600 West Main Street, Suite 300
Louisville, Kentucky 40202
502-589-6190

Counsel for Defendant Brooks:

Michael L. Boylan
200 South Fifth Street, Suite 10N
Louisville, Kentucky 40202
502-581-9206

Counsel for Defendant Marks:

Armand I. Judah
539 West Market Street, Second Floor
Louisville, Kentucky 40202
502-584-6266

- 3) *United States v. Aguon*, Case No. 97-CR-00024, (W.D. Ky. 1997), *aff'd*, 209 F.3d 577 (6th Cir. 2000).

The *Aguon* case was a companion case to the case against Brooks and Marks. I tried it as sole counsel in July 1998. Aguon had been involved in only approximately two of the eight armed bank robberies after he escaped from jail in an adjoining county. The case involved significant testimony from traumatized victim witnesses, who were testifying regarding some of the robberies for the second time in three months, and also involved the difficult testimony of cooperating witnesses. The case was evidence-intensive, involving forensic evidence developed by the FBI laboratory, witness evidence, cooperating witnesses and physical evidence. The conviction that followed the jury trial was upheld by the Sixth Circuit in an appeal consolidated with the case against Brooks and Marks.

Dates of representation: 1997-1999

Presiding Judge: U.S. District Judge Thomas B. Russell

Counsel for Defendant:

Vincent F. Heuser, Jr.
3600 Goldsmith Lane
Louisville, Kentucky 40220
502-479-0645

- 4) *United States v. Brown*, Case No. 98-CR-0010 (W.D. Ky. 1998), *aff'd*, 230 F.3d 1360 (6th Cir. 2000).

I was assigned the case following the defendant's arrest by local police in Owensboro, Kentucky. The charges against the defendant included possessing cocaine with intent to distribute, and being a felon in possession of a firearm. I was the sole counsel at trial. Immediately before the start of trial, the defendant pleaded guilty to being a felon in possession of a firearm and the lesser charge of simple possession of cocaine, leaving for the jury the question of whether he intended to distribute the cocaine. The case turned in part on expert trial testimony from a Kentucky State Police detective with considerable narcotics experience. The jury convicted the defendant on the more serious distribution charge. The conviction and sentence were upheld by the Sixth Circuit in an opinion that examined the appropriateness of expert law enforcement testimony.

Dates of representation: 1998 – 1999

Presiding Judge: U.S. District Judge Joseph H. McKinley

Counsel for Defendant:

Scott T. Wendelsdorf

Western Kentucky Federal Defender, Inc.
629 Fourth Avenue
Louisville, Kentucky 40202
502-584-0525

5) *United States v. Ables*, Case No. 94-CR-0070 (W.D. Ky. 1995), *aff'd*, 167 F.3d 1021 (6th Cir. 1999).

I was assigned to work on this case as associate counsel to senior AUSA Marisa Ford. The case involved charges of operating an illegal gambling business and related money laundering. The defendants operated a bingo hall as a charitable entity, asserting that proceeds earned on any particular day would be donated to a tax exempt organization. The case involved numerous witnesses regarding the operation of the bingo hall and the bingo hall's relationship with various community-based charitable organizations. My pretrial responsibilities were to interact with case agents and to assist in the preparation of numerous witnesses. During trial I handled witness testimony and assisted in the management of the evidence submitted to the court. The trial lasted over three weeks. Attendant to the criminal trial were claims made by the community-based organizations for a share of the criminally forfeited proceeds of the crime. The trial resulted in the conviction of the two main operators of the bingo hall. The convictions were subsequently upheld by the Sixth Circuit.

Dates of representation: 1995 – 1996

Presiding Judge: U.S. District Judge Thomas B. Russell

Co-Counsel:

Assistant U.S. Attorney Marisa J. Ford
717 West Broadway
Louisville, Kentucky 40202
502-582-5911

Counsel for Defendant Ables:

G. Murray Turner
440 South Seventh Street, Suite 300
Louisville, Kentucky 40202
502-584-6375

Counsel for Defendant Lampton:

Fred Radolovich
(no current business contact information available)

Counsel for Defendant Bennett:

Jerry McGraw
1700 UPS Drive, Suite 106
Louisville, Kentucky 40223
502-423-1075

6) *Tucker v. Northwestern Mut. Life Ins. Co.*, Case No. 00-CV-587 (W.D. Ky. 2000).

I was lead counsel for a disability insurance carrier in a case involving insurance contract claims made by a dental surgeon. The case involved complex medical issues and interpretation of insurance contract provisions. Pretrial discovery included numerous fact depositions, as well as medical and engineering expert depositions. We mediated the case on two separate occasions before two different mediators. After extensive pretrial discovery and motion practice, the matter was settled following the second mediation conference. No appeal was taken.

Dates of representation: 2000 – 2002

Presiding Judges: U.S. District Judge Jennifer B. Coffman, U.S. Magistrate Judge James D. Moyer

Counsel for Plaintiff:

Harold Storment
239 South Fifth Street, Suite 1800
Louisville, Kentucky 40202
502-589-5533

7) *Ky. State Treasurer v. Sec'y of Fin.*, Case No. 02-CR-00855 (Ky. Cir. Ct., Franklin Cty. 2002); *Attorney General v. Office of the Governor*, Case No. 04-CI-00719 (Ky. Cir. Ct., Franklin Cty.); *see also Governor of Kentucky v. Attorney General*, Case No. 2005-SC-00046-TG (Ky.).

I represented the Kentucky Department of Treasury in litigation that followed from the failure of the state legislature to pass budget legislation, leading to a potential shutdown of state government operations. In the first case, the Treasurer brought suit against the state finance cabinet in an effort to seek a judicial ruling on the extent to which the Treasurer could continue to authorize payments for ongoing and necessary government operations at the direction of the Governor, but in the absence of legislative approval. The case was eventually rendered moot by a subsequent budget compromise. However, a similar situation developed in 2004, leading to a suit by the Attorney General against the Governor, Treasurer and numerous other entities. The Kentucky Supreme Court ultimately ruled on the constitutionality of the executive spending plan.

Dates of representation: 2002, 2004 – 2005

Presiding Judge: Franklin Circuit Judge William Graham

Counsel for Defendant Secretary of Finance:

Sheryl G. Snyder
400 West Market Street, Suite 3200
Louisville, Kentucky 40202
502-568-0247

Counsel for Intervening Defendant:

Christopher L. Lilly
700 Capital Avenue, Suite 319
Frankfort, Kentucky 40601
502-564-8100

8) *Smith v. Hanson Aggregates Davon, Inc.*, Case No. 07-CR-00259 (Ky. Cir. Ct., Carter Cty. 2007).

I was lead counsel for defendant Hanson, a national aggregates producer. This case centered upon a limestone quarry operation in eastern Kentucky. The case, typical of similar matters I handled, included a dispute over royalties under a contract which provided certain rights to extract minerals from the land. I handled the pretrial motion practice and preparation of experts. I was also responsible for negotiation of the resulting confidential settlement agreement. No appeal was taken.

Dates of representation: 2007 – 2008

Presiding Judge: Carter Circuit Judge Rebecca Phillips

Co-Counsel:

William H. Wilhoit
103 South Hord Street
Grayson, Kentucky 41143
606-474-8833

Counsel for Plaintiff:

Charles M. Johnstone
1129 Virginia Street East
Charleston, West Virginia
304-343-7100

- 9) *Comm'r of the Ky. Dept. of Ins. v. AIK Co.*, Case No. 04-CI-01067 (Ky. Cir. Ct., Franklin Cty. 2004).

I was lead counsel for a group of companies who were former members of a failed workers' compensation self-insurance fund. In the course of litigation over the rehabilitation and liquidation of the fund, I participated as counsel in a group member committee approved by the court. I also participated in discovery, numerous hearings and in the court-ordered mediation, which resulted in a settlement agreement governing the ongoing court-monitored liquidation of the fund.

Dates of representation: 2004 – 2009

Presiding Judge: Franklin Circuit Judge Thomas Wingate

Counsel for Plaintiff:

Walter L. Sales
Paul C. Harnice
Stoll Keenon Ogden
500 West Jefferson Street
2000 PNC Plaza
Louisville, Kentucky 40202
502-333-6000

- 10) *Snyder v. EPI Corp.*, Case No. 05-CR-05565 (Ky. Cir. Ct., Jefferson Cty. 2005).

This case involved a contractual dispute between the former chief executive officer of a closely held healthcare company and the other board members of the company. The parties disagreed over the terms of the company's sale to a third party and the impact the sale had on provisions in the terminated CEO's employment contract. I was associate counsel in the trial for the plaintiff CEO. The jury returned a verdict in favor of the CEO and awarded him over \$8.4 million. No appeal was taken.

Dates of representation: 2005 – 2010

Presiding Judge: Jefferson Circuit Judge James Shake

Counsel for Defendants:

K. Gregory Haynes
Wyatt, Tarrant & Combs LLP
500 West Jefferson Street, Suite 2800
Louisville, Kentucky 40202
502-562-7363

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

After being sworn in as United States Attorney in May 2010, and completing a review of operations, I began developing several important priority initiatives. One of the first to be addressed was the status of relationships between federal and local law enforcement in the District. In order to enhance and improve these important relationships, we organized and sponsored law enforcement training conferences in Paducah and Owensboro. These conferences focused on the national priority programs of Project Safe Neighborhoods and Project Safe Childhood. Each of the conferences included personal participation and co-sponsorship by the Commissioner of the Kentucky State Police, the FBI Special Agent in Charge, the ATF Special Agent in Charge, the U.S. Marshal, and the U.S. Secret Service Special Agent in Charge. Bringing federal law enforcement leaders together with local chiefs of police and sheriffs in these settings proved effective in facilitating better coordination and cooperation, directly led to establishment of joint federal/local initiatives in the District, and has enhanced the mission of the U.S. Attorney's Office.

Addressing violent crime is a Department and District priority. In support of that priority, I have worked with local and federal law enforcement in Louisville to establish a new gun charge review initiative, called Project Recoil. The program includes the violent crime unit of the Louisville Metro Police Department, the Jefferson County Commonwealth's Attorney Office, Jefferson County Attorney, ATF, the U.S. Marshals Service, and FBI. Every two weeks, local prosecutors and federal prosecutors meet with senior Louisville police detectives and federal agents and analysts, to review recent arrests involving firearms. During the meetings, the law enforcement officers exchange intelligence and develop joint investigative strategy, and the prosecutors consider which cases may be appropriate for federal prosecution. This initiative is aimed at addressing the repeat serious offenders who cycle through local criminal justice systems and yet continue to perpetrate violence, and drug-related offenses. To support Project Recoil, and other related initiatives we are developing, I established an anti-violent crime unit in the U.S. Attorney's Office, staffed with experienced prosecutors.

I have made the epidemic of prescription pill abuse a priority in the District. In February 2012, I co-sponsored with U.S. Attorney for the Eastern District of Kentucky Kerry Harvey a statewide prescription pill summit. Over 300 people, including high school students, attended to hear medical, pharmacy, education, and law enforcement experts, along with local community leaders and statewide elected leaders, discuss the impact that prescription pill abuse is having on our communities and schools. The summit successfully focused attention on the issues, and facilitated communication and cooperation among regulators, law enforcement officials, and community leaders. As a follow-up to the conference, I initiated a public awareness campaign. I have worked with

local DEA leadership to enhance the effectiveness of the DEA prescription pill take back initiative in Louisville and Bowling Green. I asked leadership of the Jefferson County Schools – the largest system in Kentucky – to help focus parents’ attention on prescription pill abuse among teens. JCPS agreed to host a press event and a take back location at their headquarters. The events proved successful, with large amounts of prescription pills turned in to DEA for disposal. We successfully repeated this effort in Bowling Green, with the assistance of the local school boards, and local law enforcement leadership.

I previously represented the Kentucky Department of Treasury as outside counsel. The representation included assistance to the Treasury in establishing a state-sponsored college savings program pursuant to IRS section 529. This work included assistance with draft legislation, draft regulations, and review of vendor contracts.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have never taught a course.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

The only future benefits I expect to receive are from a self-directed 401(k) retirement plan.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any such plans, commitments or agreements if confirmed.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See the attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See the attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Should I be appointed, I initially would have a conflict with cases and matters that were pending in the U.S. Attorney's office while I was U.S. Attorney. I would address any such conflict by working with the Clerk of the Court to ensure that I was not assigned any such cases. If any matter were to arise that involved an actual or potential conflict of interest, I would handle it by careful and diligent application of the Code of Conduct for United States Judges, as well as other relevant canons and statutory provisions.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will carefully review any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules and practices governing such circumstances.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While in private practice, my pro bono work was varied. I provided pro bono legal assistance to my former church throughout a building project from 2000 to 2005. I have also provided informal counsel to a number of civic and charitable organizations, where I have served as a volunteer and director, including the Louisville Urban League, Kentucky Educational Television and Kentucky Youth Association.

In 2002 to 2003, I represented a retired minister in a dispute with a brokerage firm. Initially this client was referred to me as a paying client, but after assessing his situation I subsequently represented him on a pro bono basis and obtained a financial settlement on his behalf from the brokerage firm.

From approximately 2004 to 2009, I served as a volunteer youth baseball coach for a local recreation association. I have also spent time serving numerous charitable

organizations, including the Louisville Urban League, where I chaired a committee on reentry programs for nonviolent offenders.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 24, 2013, I was contacted by a staff member for Senator Mitch McConnell who requested that I complete a questionnaire for review by the Senator's staff. On February 12, 2013, I submitted the completed questionnaire. On March 11, 2013, I met with Representative John Yarmuth in Louisville, Kentucky. On February 26, 2013 and August 22, 2013, I met with staff members for Senator Rand Paul in Louisville, Kentucky. Since July 31, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 6, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 19, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2013

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Hale, David J.	2. Court or Organization U.S. District Court for the Western District of Kentucky	3. Date of Report 06/23/2014
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 06/19/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input checked="" type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 06/19/2014
7. Chambers or Office Address 717 West Broadway Louisville KY 40202		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. United States Attorney for the Western District of Kentucky	U.S. Attorney's Office for the Western District of Kentucky
2. Director	Executive Board, Appalachia High Intensity Drug Trafficking Area (HIDTA)
3.	
4.	
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☐ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 2008	Reed Weitkamp Schell & Vice PLLC Master Retirement Trust, 401(k) retirement plan with former law firm, self-directed
2.	
3.	

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FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Hale, David J.	Date of Report 06/23/2014
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

A. Filer's Non-Investment Income

☒ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.		
2.		
3.		
4.		

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, complete this section.
(Dollar amount not required except for honoraria.)

☐ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2014	Baptist Health - salary
2. 2013	Baptist Health - salary
3.	
4.	

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE (No reportable reimbursements.)

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Hale, David J.	06/23/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*
☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Reed Weitkamp Schell & Vice Master Retirement Trust 401(k)	Loan from self-directed 401(k). See note in Part VIII.	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Hale, David J.	06/23/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. First Capital Bank Accounts	A	Interest	K	T					
2. First Capital Bank Stock	B	Dividend	M	W					
3. Kentucky's Affordable Prepaid Tuition (529 Plan)	C	Distribution	J	T					
4. Fidelity Freedom K 2035 Fund	A	Dividend	J	T					
5. General Electric Co. Stock	A	Dividend	J	T					
6. UBS Dynamic Alpha Fund	A	Dividend	J	T					
7. UBS Global Allocation Fund	A	Dividend	J	T					
8. UBS Cash Accounts	A	Interest	J	T					
9. 401(k) #1									
10. -American Funds Growth Fund of America	A	Dividend	J	T					
11. -American Funds Washington Mut. Investors Fund	A	Dividend	J	T					
12. -Franklin Templeton Mutual Shares Fund	A	Dividend	J	T					
13. -Nationwide Global Equity Fund	A	Dividend	J	T					
14. -UBS Dynamic Alpha Fund	B	Dividend	K	T					
15. -UBS Global Allocation Fund	B	Dividend	K	T					
16. -UBS US Equity Opportunity Fund	A	Dividend	J	T					
17. -UBS Cash accounts	A	Interest	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Hale, David J.	06/23/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)
☐ **NONE** (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. --Note - Loan from self directed 401(k)	A	Interest	K	T					
19.									
20.									
21.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$30,000,000	B = \$1,001 - \$2,500 O = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 Q = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Hale, David J.	06/23/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

401(k) #1 is a self-directed retirement fund. I am solely responsible for the investment decisions of the fund. In 2013, I took a loan from 401(k) #1 and, pursuant to a note, I am repaying the loan over a five year period. The liability for the loan is listed in Part VI, line 1. Because the note is an asset of 401(k) #1, it is also listed in Part VII, line 18.

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FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Hale, David J.	06/23/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ David J. Hale**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

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FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		55	806	Notes payable to banks-secured			
U.S. Government securities-Series EE bonds			200	Notes payable to banks-unsecured			
Listed securities - see schedule		129	574	Notes payable to relatives			
Unlisted securities - see schedule		109	000	Notes payable to others		21	109
Accounts and notes receivable:		21	109	Accounts and bills due		4	920
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		355	733
Real estate owned - personal residence		540	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		60	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		56	279				
Kentucky Prepaid College Tuition Plan		11	556				
				Total liabilities		381	762
				Net Worth		601	762
Total Assets		983	524	Total liabilities and net worth		983	524
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

American Funds Growth Fund of America	\$ 7,610
American Funds Washington Mutual Investors Fund	12,831
Fidelity Freedom K 2035 Fund	11,999
Franklin Templeton Mutual Shares Fund	9,721
General Electric Co. stock	3,411
Nationwide Global Equity Fund	11,708
UBS Dynamic Alpha Fund	28,352
UBS Global Allocation Fund	38,305
UBS US Equity Opportunity Fund	5,637
Total Listed Securities	<u>129,574</u>

Unlisted Securities

FCB Bancorp Inc.	<u>\$ 109,000</u>
Total Unlisted Securities	<u>\$ 109,000</u>

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AFFIDAVIT

I, David J. Hale, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

6-19-14
(DATE)

David J. Hale
(NAME)

Jennifer Gayle Bailey
(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Greg N. Stivers

2. **Position:** State the position for which you have been nominated.

United States District Court Judge for the Western District of Kentucky

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Kerrick Bachert Stivers, PSC
1025 State Street
P.O. Box 9547
Bowling Green, KY 42102

4. **Birthplace:** State year and place of birth.

1960; Hazard, Kentucky

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1982 – 1985, University of Kentucky College of Law; J.D., 1985
1979 – 1982, Eastern Kentucky University; B.A., 1982
1978 – 1979, University of Louisville; no degree received

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1985 – Present
Kerrick Bachert Stivers, PSC
(formerly Campbell, Kerrick and Grise (1985 – 1993); Kerrick, Grise and Stivers (1993 – 2003); Kerrick, Stivers and Coyle (2003 – 2008); and Kerrick, Stivers Coyle & Van Zant

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(2008 – 2011); Kerrick Stivers Coyle, PLLC (2011 – 2014))
1025 State Street
P. O. Box 9547
Bowling Green, KY 42102
Partner (1990 – present)
Associate (1985 – 1990)

1984 – 1985
Vimont and Wills
155 East Main Street
Lexington, KY 40507
Law Clerk

Summer 1983
Bell, Orr, Ayers & Moore
1010 College Street
Bowling Green, KY 42101
Law Clerk

Summer 1982
HHL Partners Warehouse
Church Street
Bowling Green, KY 42101
General Labor

Other Affiliations (compensated unless otherwise indicated):

2011 – Present
Monticello Banking Company (area bank)
1050 Wilkins Trace
Bowling Green, KY 42103
Director

2006 – Present
State Street Realty, LLC (owns law firm office building)
1025 State Street
Bowling Green, KY 42101
Member

2002 – Present
Blackacre Partners, LLC (owns development real estate)
2819 Ring Road, Suite 200
Elizabethtown, KY 42701
Member

1999 – Present

WKU Research Foundation, Inc. (uncompensated)
2413 Nashville Road
Bowling Green, KY 42104
Director (1999 – present)
Board Chair (2011, 2013)

2013
Rivergreen Homeowner's Association, Inc. (uncompensated)
1945 Scottsville Road
Bowling Green, KY 42104

2006 – 2013
Hilltopper Athletic Foundation (uncompensated)
1605 Avenue of Champions
Bowling Green, KY 42101
Director (2006 – 2013)
President (2010)

2004 – 2006
St. Joseph Cemetery Board (uncompensated)
434 Church Street
Bowling Green, KY 42101
Board Counsel

1989 – 1998
Big Brothers/Big Sisters of Bowling Green, Inc. (not compensated)
716 East 10th Avenue
Bowling Green, KY 42101
Director 1989-1998; President 1998

1998 – Present
ELL, Inc. (owns rental real estate)
1465 Rivergreen Lane
Bowling Green, KY 42103
President

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I timely registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

2012, 2013, 2014 - Super Lawyer for Kentucky
 2011 - AV Rated by Martindale-Hubbell
 2011 - Western Kentucky University Cherry Society
 2009, 2010, 2012 - Western Kentucky University Summit Award
 1985 - Graduated with distinction from Eastern Kentucky University
 1984 - American Jurisprudence Award, Professional Responsibility

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
 Association of Defense Trial Attorneys
 Bowling Green/Warren County Bar Association
 Defense Research Institute
 Kentucky Bankers Association
 Kentucky Bar Association
 Employment Law Section
 Workers Compensation Section
 Local Government Section
 Kentucky Defense Counsel

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Kentucky, 1985

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

U. S. District Court, Western District of Kentucky, 1989

U. S. District Court, Eastern District of Kentucky, 1986

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which

you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Bowling Green Country Club (1988 – present)
 Bowling Green Noon Lions Club (1986 – 1992)
 Bowling Green – Warren County Jaycees (1986 – 1995)
 Olde Stone Country Club (2008 – present)
 Rivergreen Homeowner's Association (2006 – present)
 Director (2012 – 2013)
 The Other Club (2012 – present)
 University of Kentucky College of Law Alumni Association (1986 – present)
 Western Kentucky University Child Care Consortium Oversight Committee
 (2010 – present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Other Club is a men's literary group which does not have any female members, although there are a number of women's literary groups in the area. I joined the Bowling Green Country Club in 1988, and do not believe there were any discriminatory membership requirements in place during the entirety of my membership. The first African American member joined the Bowling Green Country Club in 1992. The Lions Club International amended its charter to open its membership to women the year that I joined, and the Bowling Green Noon Lions Club inducted its first female member the next year. Prior to my joining the Jaycees, membership was limited to men. To the best of my knowledge, none of the other organizations to which I belong discriminate or formerly have discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership practices.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

With Scott D. Laufenberg, "The Impending End of the Jural Rights Doctrine in Kentucky Jurisprudence," 99 Ky. L.J. Online 50 (2011). Copy supplied.

Letter to the Editor, Bowling Green Daily News, February 3, 2010. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I presented seminars on workers' compensation defense issues to a firm client, Aetna Insurance Company in Indianapolis, Indiana, in the early 1990s. I also presented on this topic at seminars for local business and legal organization in Bowling Green, Kentucky, in 1992 or 1993, but I have no materials from these presentations.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Shelby Rogers, *WKU Loses Legal Appeal*, College Heights Herald, April 23, 2014. Copy supplied.

Lynn Minton, *Stivers Recognized by Summit Awards*, WKU Office of Research, November 5, 2012. Copy supplied.

Justin Story, *Appeals Court: WKU Justified in Firing Zhang*, Bowling Green Daily News, October 8, 2012. Copy supplied

Justin Story, *BGPD Sergeant Gets Setback on Overtime Pay*, Bowling Green Daily News, October 6, 2012. Copy supplied.

Andrew Wolfson, *Guns OK in Camp Vehicles*, The Courier-Journal, April 27, 2012. Copy supplied.

Justin Story, *Court Dismisses Whistle-Blowing Suit Against City*, Bowling Green Daily News, September 7, 2011. Copy supplied.

Justin Story, *Court Won't Hear Wells' Age Bias Suit*, Bowling Green Daily News, September 3, 2011. Copy supplied.

Justin Story, *BGPD Sergeant wins OT in Lawsuit, Judge Orders City to Credit Helbig With Two Hours of Pay*, Bowling Green Daily News, September 1, 2011. Copy supplied.

Deborah Highland, *Judge to Rule on BGPD Sergeant's Overtime Pay*, Bowling Green Daily News, July 13, 2011. Copy supplied.

Justin Story, *Court Upholds Ruling for City in Bias Lawsuit*, Bowling Green Daily News, April 19, 2011. Copy supplied.

Jonathan Linter, *Former Employee Sues WKU, Claiming Mistreatment in Firing*, College Heights Herald, April 15, 2011. Copy supplied

Justin Story, *Former BGFD Deputy Chief Cherry Loses Suit Against City*, Bowling Green Daily News, February 18, 2011. Copy supplied.

Justin Story, *Appeals Court Upholds Ruling for City in Property Dispute*, Bowling Green Daily News, February 15, 2011. Copy supplied.

Justin Story, *Jury to Hear Case in Suit Against City*, Bowling Green Daily News, January 28, 2011. Copy supplied.

Justin Story, *Sergeant Appeals Dismissal of Suit, BGPD's Helbig Sued City Over Losing Captain Position*, Bowling Green Daily News, January 14, 2011. Copy supplied.

Justin Story, *BGPD Sergeant's Lawsuit vs. City Dismissed*, Bowling Green Daily News, December 29, 2010. Copy supplied.

Justin Story, *Suit Against City Going to Trial in Feb., Trial Was to Begin on Nov. 9*, Bowling Green Daily News, October 28, 2010. Copy supplied.

Bruce Schreiner, *Rand Paul Known for Frugal Side at Home*, Associated Press, October 16, 2010. Copy supplied.

Tessa Duvall, *Zhang Loses Suit Against WKU*, College Heights Herald, October 1, 2010. Copy supplied.

Justin Story, *Jury Finds in Favor of WKU in Civil Lawsuit, Ex-Employee Claimed Pregnancy Led to Her Firing*, Bowling Green Daily News, October 1, 2010. Copy supplied.

Justin Story, *Jury Find in Favor of WKU in Civil Lawsuit*, Bowling Green Daily News, October 1, 2010. Copy supplied.

Justin Story, *Zhang Recalls Time at WKU, Former ICSET Employee – The Only Witness to Testify on First Day of Trial – Is Seeking Nearly \$200K From Western*, Bowling Green Daily News, September 29, 2010. Copy supplied.

Justin Story, *Wrongful Termination Case Against WKU Heads to Trial*, Bowling Green Daily News, September 26, 2010. Copy supplied.

Justin Story, *Jury Will Hear Termination Suit Against Western*, Bowling Green Daily News, July 2, 2010. Copy supplied.

Justin Story, *Judge Dismisses Former Interim Police Chief's Discrimination Claim*, Bowling Green Daily News, June 29, 2010. Copy supplied.

Justin Story, *ICSET Director Accused of Exploitation*, Bowling Green Daily News, April 18, 2010. Copy supplied.

Western Kentucky University Press Release, *Western Kentucky University Announces Tailgating, Parking Details*, April 16, 2010. Copy supplied.

Justin Story, *Judge Rules Against Couple in Dispute with City*, Bowling Green Daily News, November 19, 2009. Copy supplied.

James Mayse, *Attorneys Rebuff Request for RWRA Settlement Document*, Messenger-Inquirer, July 30, 2009. Copy supplied.

Justin Story, *Autry Family May Get \$200K*, Bowling Green Daily News, June 9, 2009. Copy supplied.

Jim Gaines, *Lawsuits Against City Linger: One Involves Halfway House Company, the Other Brought by Former BGPD Colonel*, The Daily News, March 2, 2009. Copy supplied.

Ky. Board Upholds \$200,000 Award in Dorm Death, WDRB.com. Copy supplied.

Jim Gaines, *Bowling Green Officials to be Dropped From Keeton Corrections Suit*, Bowling Green Daily News, December 11, 2008. Copy supplied.

Jim Gaines, *Keeton Renews Suit Over Property*, Bowling Green Daily News, November 29, 2008. Copy supplied.

Jim Gaines, *Judge Dismisses Suit Against Area Planners*, Bowling Green Daily News, September 26, 2008. Copy supplied.

Natalie Jordan, *Judge Dismisses Lawsuit Against Western Claiming Discrimination*, Bowling Green Daily News, August 7, 2008. Copy supplied.

Western Kentucky University Press Release, *Discrimination Suit Against Western Kentucky University Dismissed*, August 6, 2008. Copy supplied.

Natalie Jordan, *Western Fights for Land on Normal*, Bowling Green Daily News, February 20, 2008. Copy supplied.

Ameerah Cetawayo, *Eateries Close, Greek Village Gains Ground*, Bowling Green Daily News, September 13, 2007. Copy supplied.

Brett Barrouquere, *Supreme Court Says University Can't Be Sued over Dorm Fire, Death*, AP Alert – Kentucky, April 20, 2007. Copy supplied.

Burton Speakman, *Autry Case to High Court*, Bowling Green Daily News, January 19, 2007. Copy supplied.

Lisa Autry, *Soules Sentenced to Life In Prison in Dorm Fire Case*, WKYU, January 17, 2007. Copy supplied.

Alex Fontana, *Appeal Set for Wrongful Death Suit for Murdered Western Kentucky U. Student*, College Heights Herald, December 27, 2006. Copy supplied.

Alex Fontana, *Warren Judge-Exec Candidate Misused WKU Alumni Directories*, College Heights Herald, October 31, 2006. Copy supplied.

Hayli Fellwock, *State Appellate Court Judges Hear Katie Autry Civil Lawsuit Arguments*, Bowling Green Daily News, December 15, 2004. Copy supplied.

Scott Sisco, *CIMA Whistleblower Wins Judgment, Damages From Company in Lawsuit*, Bowling Green Daily News, May 18, 2004. Copy supplied.

Hayli Fellwock, *Goodrum Seeks New Hearing*, Bowling Green Daily News, February 12, 2004. Copy supplied.

Taylor Loyal, *Autry Death Suit Up in Air*, Bowling Green Daily News, November 4, 2003. Copy supplied

People Poll, Eastern Progress, February 4, 1982. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not served as a judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

- i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If

any of the opinions listed were not officially reported, provide copies of the opinions.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not been elected or appointed to any public office. I have not been a candidate for any elected or appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

After consulting my records and the Internet, I have provided all the information regarding my political activities that I can recall, though there may be some events that I have missed. In 2010, I co-hosted fundraisers for local candidates, including Warren County Magistrate James "Doc" Kaelin and Warren County Judge-Executive Mike Buchanan. In 2010, I also co-hosted a fundraiser for Rand Paul in his campaign for the United States Senate and wrote an editorial in the local paper in defense of Senator Paul. In 2004, I went door-to-door in my neighborhood campaigning for John Grise when he successfully ran for Warren County Circuit Judge.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a law clerk to any judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1985 – present

Kerrick Bachert Stivers, PSC

(formerly Campbell, Kerrick and Grise (1985 – 1993); Kerrick, Grise and Stivers (1993 – 2003); Kerrick, Stivers and Coyle (2003 – 2008); and Kerrick, Stivers Coyle & Van Zant (2008 – 2011) Kerrick Stivers Coyle, PLLC (2011-2014))

1025 State Street

Bowling Green, Kentucky 42101

Partner (1990 – present)

Associate (1985 – 1990)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I have worked exclusively in the private practice of law since graduating from law school in 1985. I was hired by the firm of Campbell, Kerrick, and Grise, (subsequently Kerrick, Grise and Stivers (1993 – 2003); Kerrick, Stivers and Coyle (2003 – 2008); and Kerrick, Stivers Coyle & Van Zant (2008 – 2011); Kerrick Stivers Coyle, PLLC (2011 – 2014); and Kerrick Bachert Stivers, PSC (2014 – present)). The firm has a general civil practice with a heavy emphasis on litigation. My work varied widely in my first few years of practice. I tried a few civil cases in district and circuit court and assisted our senior partner on numerous matters. I also handled the firm's commercial and real estate practice. Beginning in roughly 1988, I began to concentrate in defending workers' compensation claims, which became the primary focus of my litigation practice in the late 1980s to 1996. During this period I continued to spend a significant amount of time working on transactional work, including representing clients buying and selling businesses and in property acquisition and financing.

In 1996, the Kentucky Workers Compensation Act was overhauled by the Kentucky legislature which resulted in a significant downturn in the number of litigated claims. At about that time, I began defending employers in several discrimination cases and was retained in some significant commercial litigation on behalf of business clients. My employment law practice expanded around 2000 with a series of discrimination cases against a local county hospital. I then began representing municipal governments throughout south-central and western Kentucky in a wide variety of general liability, discrimination, and civil rights matters.

My practice is currently focused on litigation of employment and municipal liability claims, as well as general representation of clients on business and transactional matters.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Most of my litigation clients have been employers and insurers, although I have also represented plaintiffs in workers' compensation, personal injury, and commercial litigation. Beginning in roughly 1988, I began representing Dollar General Corporation (then headquartered in nearby Scottsville, Kentucky) throughout the state on general liability and workers' compensation cases. Around that same time, I developed some expertise in workers' compensation claims for Aetna Insurance Company. After 1996, I began working with Western Kentucky University (WKU) on employment-related matters and was retained in some significant commercial litigation on behalf of business clients. My employment law practice expanded around 2000 with a series of discrimination cases against Monroe County Medical Center, a county hospital which my firm represented. In the early 2000s I started representing municipal governments throughout south-central and western Kentucky through the Kentucky League of Cities (KLC) in a variety of general liability, discrimination and civil rights cases. Presently my practice consists of serving WKU as its general outside counsel, working with WKU, KLC, and on employment litigation, and working with business clients on transactional matters.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Overall, my practice has been split 80/20 between litigation and business representation and transactions. In the first ten years of practice, I spent approximately 90% of my time in litigation. For the last fifteen years, my practice has been split approximately 70/30 between litigation and transactional work and general counseling. During the entirety of my legal practice I have regularly appeared in state and federal courts and before administrative agencies.

- i. Indicate the percentage of your practice in:

1. federal courts:	20%
2. state courts of record:	65%
3. other courts:	0%
4. administrative agencies:	15%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	100%
2. criminal proceedings:	0%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate that I have tried more than 50 civil cases to verdict, judgment, or final decision, almost all of which were as sole or chief counsel. I have tried approximately 20 jury trials, four as sole counsel and one as associate counsel, and five bench trials, all as sole counsel. On workers' compensation claims before the Kentucky Department of Worker's Claims, I have tried roughly 40 to 50 cases to a final decision, all as sole counsel.

- i. What percentage of these trials were:
 - 1. jury: 20%
 - 2. non-jury: 80%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the United States Supreme Court.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- (1) Caneyville v. Green's Motorcycle, 296 S.W.3d 790 (Ky. 2009); Grayson Circuit Court, Division II, presided over by Judge Robert A. Miller; Kentucky Court of Appeals No. 2006-CA-001142-MR; Supreme Court of Kentucky No. 2007-SC-000517-DG; 2005 – 2009.

I served as the lead counsel in defense of negligence claims against the City of Caneyville volunteer fire department for failing to extinguish a fire timely. The trial court granted our motion to dismiss under a statute affording immunity to fire-fighters, which was reversed by the Kentucky Court of Appeals as a violation of the jural rights doctrine. Under the jural rights doctrine, Kentucky courts had held since 1932 that the legislature was barred from abridging any tort rights that existed at the time of the 1892 Constitution. The Kentucky Supreme Court

accepted discretionary review and reversed the Court of Appeals. In its decision, the court reinstated the trial court's dismissal and, by a plurality, overturned the jural rights doctrine. When the case reached the Kentucky Supreme Court, I served as chief appellate counsel.

Counsel for Plaintiff:
Alton Cannon
P.O. Box 427
Leitchfield KY 42755
270-259-9631

- (2) Autry v. Western Kentucky University, 219 S.W.2d 713 (Ky. 2007); Warren Circuit Court, Division No. I, presided over by Judges Thomas R. Lewis and Steve A. Wilson – Case No. 03-CI-01492; Kentucky Court of Appeals No. 2004-CA-000216; Supreme Court of Kentucky No. 2005-SC-000480-DG; Commonwealth of Kentucky Board of Claims Claim No. BC-04-402 presided over by Jan M. West, Hearing Officer; 2003 – 2009.

I served as chief counsel representing Western Kentucky University (WKU) and officials in a wrongful death claim arising from the brutal rape and murder of a student in her dormitory room. The trial court dismissed WKU and the foundation created by WKU to operate the dorm on the basis of sovereign immunity. The Court of Appeals affirmed dismissal of WKU, but reversed with respect to the foundation. The Kentucky Supreme Court subsequently affirmed the trial court decision, holding that both WKU and the foundation were performing governmental functions and were therefore immune from suit. I drafted the motion to dismiss before the trial court and the briefs before both the Court of Appeals and the Kentucky Supreme Court. I also argued the case before both appellate courts.

Counsel for Plaintiff, Estate of Autry:
Ben Crocker
Crocker Law Firm
520 East Main Street
Bowling Green, KY 42101
270-846-3100

For Co-Defendant WKU Student Life Foundation:
Charles E. English, Jr.
English Lucas Priest & Owsley
1101 College Street
Bowling Green, KY 42101
270-781-6500

Joe Bill Campbell
Hughes & Coleman

1256 Campbell Lane, Suite. 201
Bowling Green, KY 42104
270-782-6000

Reford H. Coleman
Eric Allen Hamilton
Coleman Lochmiller & Bond
P.O. Box 1177
Elizabethtown, KY 42702
270-737-0600

C. Terrell Miller
217 Fox Run Road
Georgetown, KY 40324
502-696-5389

Linda S. Bouvette
American Water
169 Burning Springs Road
Belle, WV 25015
304-340-0763

- (3) Cook v. WKU, Commonwealth of Kentucky, Court of Appeals, 97-CA-001733. Warren Circuit Court, Division I, Case No. 96-CI-00819 presided over by Judge Thomas R. Lewis; Commonwealth of Kentucky Court of Appeals Case No. 97-CA-001733; Kentucky Supreme Court No. 99-SC-00801; 1994 – 2001.

I represented Western Kentucky University (WKU) as sole counsel in a claim of religious discrimination for failure to accommodate an employee's religious belief against working on the Sabbath. I conducted all discovery and tried the case before the Kentucky Human Rights Commission, which found in favor of the employee. On appeal to the Warren Circuit Court, the Commission's ruling was affirmed, but was subsequently reversed by the Kentucky Court of Appeals on the basis of precedent from the Supreme Court of the United States.

Counsel for Plaintiff:
Leslie Jones
Kentucky Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40501
502-564-8006

- (4) Tucker v. City of Princeton, US District Court for the Western District of Kentucky, 5:08-CV-203-R, in the United States District Court for the Western District Court of Kentucky, presided over by Thomas R. Russell, Chief Judge; 2008 – 2011.

I represented the City of Princeton as primary counsel in a sexual harassment claim by the sole female officer on the police force. At the conclusion of discovery, the trial court granted our motion for summary judgment in favor of the City, finding that the supervisor mistreated all of the employees and that therefore the plaintiff had not established that the supervisor had treated her differently than the male officers. I drafted all pleadings, conducted all of the discovery depositions, and I drafted the dispositive motion.

Counsel for Plaintiff, Abigail Tucker:
Edward K. Box
P.O. Box 30
Paducah, KY 42002-0030
270-442-1900

- (5) Bartley v. Monroe Medical Foundation, Inc., Case No. 1:00CV-112 in the United States District Court for the Western District of Kentucky, presided over by Judge Joseph H. McKinley, Jr.; 1999 – 2003.

I served as sole counsel representing a county hospital on a claim of disability discrimination. While the plaintiff was on leave at a treatment facility for alcohol addiction, the hospital learned that he had not been performing many significant functions of his position as manager of the hospital's laboratory and terminated him. The plaintiff contended that the hospital discriminated against him because of his alcoholism. The district court dismissed the case on the hospital's motion for summary judgment on the basis that the hospital had the right to terminate an employee who did not perform his job duties. I drafted the pleadings, conducted all discovery, and prepared the memorandum in support of the hospital's motion for summary judgment.

Counsel for Plaintiff:
Glen Parrish
(no current business contact information available)

- (6) Dye v. Western Kentucky University, Warren Circuit Court, Division I, Case No. 97-CI-01379, presided over by Judge Thomas R. Lewis; Commonwealth of Kentucky Court of Appeals No. 2001-CA-1320; 1997 – 2001.

I served as chief counsel representing Western Kentucky University (WKU) in a wrongful discharge claim in which the plaintiff alleged that he was fired on the basis of his race and his previous request to be on light duty because of high blood pressure and an irregular heartbeat. WKU had discharged the plaintiff after he engaged in a loud and profane argument with a co-worker. The university had previously issued two written warnings to the plaintiff for incidents involving confrontations with students in the residence halls where the plaintiff served as a custodian. After the second warning, the plaintiff was told that any similar

infraction would result in his termination. Less than three months later, he got into a heated exchange with another custodian in front of his supervisor, who recommended termination. The case was tried on March 6-8, 2001. A defense verdict was returned by the jury, which was affirmed on appeal by the Kentucky Court of Appeals.

Counsel for Robert Dye:
Nancy Oliver Roberts
1023 Kentucky Street
Bowling Green, KY 42101
270-842-5900

- (7) Brown v. Carroll Cabinet Company, Warren Circuit Court, Division I, 97-CI-1127, Hon. Thomas R. Lewis, presiding; 1997 – 1999.

I served as sole counsel for the plaintiff, who was a quadriplegic co-owner of a family business in a fraud claim against his former in-laws. After a tragic accident that left him paralyzed from the neck down, the plaintiff's father-in-law, Mr. Carroll, told him that his medical bills would bankrupt the cabinet business for which the plaintiff had worked for several years prior to his accident. Carroll had the plaintiff sign a release of his interest in the company for no consideration, despite the fact that the plaintiff had been promised ownership in the company and had been listed in the annual minutes as a shareholder and director. One month after he signed the release, the plaintiff's wife filed for divorce and his in-laws denied that the plaintiff ever owned any interest in the company. Defendants refused to make any settlement offers. The case was tried for three days beginning on January 12, 1999. After presentation of the plaintiff's case in chief, defendants settled by payment of the full value established by the plaintiff's expert for his interest in the \$3.5 million company. I did all of the research, drafted the complaint, conducted all discovery, and tried the case.

Co-Counsel for Defendants, Carroll Cabinet Company:

Steve Catron
(formerly of Wyatt, Tarrant, and Combs)
(no current business contact information available)

Michael Vitale
English, Lucas, Priest and Owsley
1101 College Street
Bowling Green, KY 42102
270-781-6500

- (8) Cherry v. City of Bowling Green, Civil Action No. 06-CI-00877, Warren Circuit Court, Division II, Hon. John R. Grise presiding; Commonwealth of Kentucky,

Court of Appeals, 2011-CA-000591 and 2011-CA-000641; Commonwealth of Kentucky, Kentucky Supreme Court, Case No. 2012-SC-000489; 2008 – 2013.

I represented the City of Bowling Green as sole trial and appellate counsel in a retaliation claim by a firefighter who was disciplined for misuse of department credit cards. Following a hearing before the City Commission, the plaintiff was suspended and additional actions were taken, which he claimed as double jeopardy in violation of procedural rights afforded firefighters under KRS 95.450. After a three-day trial, a jury verdict was rendered in favor of the City on the statutory process claim, which was affirmed by the Kentucky Court of Appeals. The Kentucky Supreme Court denied discretionary review. I took over this case after most discovery had been taken and served as sole counsel at trial. I also handled the appellate briefs and argument before the Kentucky Court of Appeals and on the motion for discretionary review.

Counsel for Plaintiff:

Matthew J. Baker
911 College Street
Bowling Green, KY 42101
270-746-2385

- (9) Zhang v. Western Kentucky University, 07-CI-01933 – Warren Circuit Court, Division II, presided over by Judge John R. Grise; Commonwealth of Kentucky, Court of Appeals 2011-CA-287; Supreme Court of Kentucky Case No. 2012-SC-000690; 2007 – 2013 .

I served as chief counsel in a claim against Western Kentucky University (WKU) by a former employee, alleging wrongful termination based on race and gender, as well as wage and hour and outrage claims. The plaintiff, a Chinese national with a Ph.D. in chemistry from Northwestern University, was hired by a laboratory at WKU to operate a particular mass spectrometer used to analyze field samples. When she was unable to operate the machine within acceptable limits after several months, the plaintiff was warned and then was transferred to work on routine sample analysis under the supervision of a masters-level supervisor. The plaintiff was warned again that she was not performing up to expectations and was given a second warning that failure to improve her work within thirty days would result in her termination. Before the end of the thirty-day period, the plaintiff advised her supervisor that she was pregnant and claimed that the supervisor, also a pregnant woman, was upset to learn of the plaintiff's pregnancy. At the end of the probationary period, the plaintiff was still not performing on a level equal to an undergraduate worker and the supervisor recommended termination to the lab director, who was also a native of China. In addition to the discrimination claims, the plaintiff also said that she was forced to work long hours and was never paid overtime during the seven months she worked at WKU. She further alleged that the lab director had invaded her privacy when he came to her apartment one

evening and forced her to return to work. The lab director testified that he had to go to the plaintiff's apartment because he did not have her phone number and a lab customer had called about a report which was overdue.

The case proceeded to trial on September 28, 2010, on the discrimination claims, after summary judgment was granted on the invasion of privacy, outrage, and wage and hour claims. A defense verdict was returned at trial, which was affirmed by the Kentucky Court of Appeals. Discretionary review was denied by the Kentucky Supreme Court.

Counsel for Plaintiff:
 Pamela Bratcher
 558 East Tenth Avenue, Suite A
 Bowling Green, KY 42101
 270-783-8311

- (10) Charles Whaley v. WKU, 01-CI-00731, Warren Circuit Court, Division I, presided over by Judge Thomas R. Lewis; 2001 – 2002 .

I represented Western Kentucky University (WKU) as sole counsel in a claim of gender and disability discrimination brought by an unsuccessful applicant for a position as associate director of the University's gifted studies program. The plaintiff had been involved in multiple automobile accidents; he walked with a cane and also took pain medication. The plaintiff claimed that he was not provided with an application packet that was supposed to be sent to persons expressing interest in the position. He also alleged that he was not told that he was expected to make a presentation to the search committee at the time of his interview. Evidence from WKU's files and testimony from the director of gifted studies indicated that contrary to plaintiff's recollection, he did fill out and sign the application packet and was informed that he should make a presentation to the search committee. At trial the successful applicant presented to the jury the slide show presentation she had shared with the committee at the time of her interview. Testimony established that plaintiff attended his interview before the search committee with some notes jotted down on a pad, but with few ideas regarding his goals for the position. At the end of a three-day trial in August 2002, the jury returned a unanimous verdict in favor of WKU.

Counsel for Plaintiff:
 John Frith Stewart
 Stewart Roelandt Craigmyle & Lynch
 6506 West Highway 22
 P.O. Box 307
 Crestwood, KY 40014
 502-241-4660

Stephen C. Emery

Howell & Emery PLLC
 105 South Walnut Avenue
 P.O. Box 655
 LaGrange, KY 40031
 502-565-4440

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

A significant part of my practice has involved transactional work. In addition to managing my firm's real estate services (primarily residential purchase and financing), I have devoted a significant amount of my practice to advising clients on business form selection and negotiating and drafting documents, as well as closing transactions involving the purchase and sale of businesses, commercial leases, and asset-based lending. These transactions have ranged from "mom and pop" businesses to the \$42 million sale of a family business to the company's employee stock option plan.

In conjunction with the litigation I have handled for Western Kentucky University, the Kentucky League of Cities, and Hardin Memorial Hospital, I have worked closely with these clients to handle employee issues prior to litigation. In many instances, through counseling, progressive discipline, and performance improvement plans, disciplinary issues have been resolved which otherwise could have resulted in lawsuits.

I have not performed lobbying activities on behalf of any clients or organizations.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

If I were confirmed, I would receive compensation from my law partnership per the buy-out terms of our operating agreement. I also would divest myself from ownership of the

building where my law firm is located. Additionally, I would roll over my 401(k) accounts out of my firm's plan. I also own some rental property, which I would sell or transfer as necessary.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments, or agreements to pursue outside employment if I am confirmed.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The most likely potential conflicts would arise with respect to cases in which my present firm has been involved and for an appropriate period of time I would recuse myself from matters in which members of my firm appear. Additionally, I would recuse myself from matters involving existing firm clients and organizations with which I have been associated.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would handle actual and potential conflicts of interest in accordance with the Code of Professional Conduct for United States Judges, and in particular Canon 3, which applies to conflicts of interest. I would look to all applicable rules and practices of the United States Courts, the Sixth Circuit, and the Western District of Kentucky, to determine the duration of such conflicts. In each such instance, I would follow 28 U.S.C. Section 455, the Code of Conduct

for United States Judges, and other applicable policies and procedures, and would recuse as appropriate.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

For the past several years, I have served the disadvantaged by working on the oversight committee for the Head Start and Early Head Start programs conducted in Bowling Green, Owensboro, and Murray, Kentucky through the Western Kentucky University Child Care Consortium. Head Start and Early Head Start promote school readiness of children from birth to five for low-income families by enhancing their cognitive, social and emotional development. These programs must have an oversight board and this function was previously performed by the Western Kentucky University Board of Regents, which delegated that responsibility to the Western Kentucky University Research Foundation (WKURF). The WKURF, in turn, formed a committee (WKU Child Care Consortium Oversight Committee or "Oversight Committee") to review monthly and quarterly financial and service documentation and to meet with auditors to ensure compliance with federal regulations. As a member of the Oversight Committee, I meet quarterly with the director and assistant director to discuss developments and issues with the program and to review budgeting and expenditures. We also receive updates from the director as well as from the Office of Head Start in the form of emails and bulletins. Additionally, I periodically attend meetings of the Parents Council, a group of parents of children participating in the program whose input and approval are a necessary part of the program.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I provided Senator Paul's State Chief with my resume in mid-2012 and met with him on a couple of occasions in Bowling Green, Kentucky, to discuss my interest in a potential nomination. I also discussed the vacancy with Senator Paul in Bowling Green, Kentucky. In response to a request from Senator McConnell's counsel, I submitted a questionnaire to Senator McConnell on April 23, 2013. On July 30, 2013, I met with Senator McConnell in Washington, D.C. The following

day I was advised by Senator McConnell's counsel that Senator McConnell had forwarded my name to the White House as a potential nominee for the Western District of Kentucky. Since August 8, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 7, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On June 19, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2013

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Stivers, Greg N.	2. Court or Organization US District Court Western District of Kentucky	3. Date of Report 06/23/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 06/19/2014 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2013 to 06/17/2014
7. Chambers or Office Address William H. Natcher Building 200 East Main Street Bowling Green, Kentucky 42101		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

	<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Member		Kerrick Bachert Stivers PSC
2. Member		State Street Realty, LLC
3. President		ELL, Inc.
4. Director		Monticello Banking Company
5. Director/Chair		WKU Research Foundation, Inc.

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

	<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.		
2.		
3.		

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Name of Person Reporting	Date of Report
Stivers, Greg N.	06/23/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2012	Kerrick Stivers Coyle, PLC- salary/bonus	\$274,879.00
2. 2012	Monticello Banking Company, Inc.-director's fees	\$3,500.00
3. 2013	Kerrick Stivers Coyle, PLC-salary/bonus	\$183,744.00
4. 2013	Monticello Banking Company-director's fees	\$3,500.00
5. 2014	Kerrick Bachert Stivers PSC (successor to Kerrick Stivers Coyle, PLC) - Salary	\$74,423.00
6. 2014	Monticello Banking Company- director's fees	\$750.00

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.
(Dollar amount not required except for honoraria.)*☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2013	BG/Warren County Convention and Visitor's Bureau-salary
2. 2013	Creative Marketing Concepts- self-employed marketing manager
3. 2014	BG/Warren County Convention and Visitor's Bureau-salary
4. 2014	Creative Marketing Concepts- self-employed marketing manager

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.**(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

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Name of Person Reporting Stivers, Greg N.	Date of Report 06/23/2014
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

☐ NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

☐ NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Merrill Lynch	line of credit	K
2.	First Mark Services	student loan	J
3.	Great Lakes Borrower Services	student loan	L
4.	GMAC (now Ocwen)	Rental Property #1 (Part VII, Line 48)	L
5.			

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Date of Report

06/23/2014

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

	A. Description of Assets (including trust assets) Place "XY" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Abbott Labs stock	A	Dividend	J	T	Exempt					
2. Abbvie Inc. stock	A	Dividend	J	T						
3. Alliance Bernstein Global Bond Fund		None	L	T						
4. AllianzGI NFJ Divident Interest & Premium Strategy Fund	B	Dividend	J	T						
5. Altria Group Inc. stock	A	Dividend	J	T						
6. Apple Inc. stock	C	Dividend	J	T						
7. Apple Inc. options	A	None	J	T						
8. Atmos Energy Corp stock	A	Dividend	J	T						
9. BlackRock Equity Dividend Fund	A	Dividend	L	T						
10. Cemex SAB de CV (ADR)		None	J	T						
11. Chevron Corp stock	B	Dividend	K	T						
12. ClearBridge Large Cap Value Fund	A	Dividend	K	T						
13. Colgate Palmolive stock	B	Dividend	L	T						
14. CSX Corp stock	A	Dividend	J	T						
15. DNP Select Income Fund Inc stock	C	Dividend	L	T						
16. Ebay Inc stock		None	J	T						
17. Express Scripts Holding Co stock		None	J	T						

1. Income Gain Codes: (See Columns D1 and D4)	A ~\$1,000 or less F ~\$50,001 - \$100,000 J ~\$15,000 or less N ~\$250,001 - \$500,000 P3 ~\$25,000,001 - \$50,000,000	B ~\$1,001 - \$2,500 G ~\$100,001 - \$1,000,000 K ~\$15,001 - \$50,000 O ~\$500,001 - \$1,000,000	C ~\$2,501 - \$5,000 H1 ~\$1,000,001 - \$5,000,000 L ~\$50,001 - \$100,000 P1 ~\$1,000,001 - \$5,000,000 P4 ~More than \$50,000,000	D ~\$5,001 - \$15,000 H2 ~More than \$5,000,000 M ~\$100,001 - \$250,000 P2 ~\$5,000,001 - \$25,000,000	E ~\$15,001 - \$50,000
2. Value Codes (See Columns C1 and D1)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Place "(X)" after each asset exempt from prior disclosure	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Fidelity New Insights Fund		None	L	T						
19. Fidelity Select Biotechnology Portfolio	A	Dividend	K	T						
20. Fidelity Value Fund	C	Dividend	K	T						
21. First Eagle Global Fund	C	Distribution	K	T						
22. Hatteras Financial Corp stock	A	Dividend								
23. Insmid	A	Dividend	J	T						
24. Monsanto Co stock	A	Dividend	K	T						
25. Openheimer Developing Markets Fund	A	Int./Div.	M	T						
26. Oppenheimer Global Opportunities Fund	A	Int./Div.	M	T						
27. Oppenheimer Small & Mid Cap Value	C	Dividend	J	T						
28. Oppenheimer International Bond Fund	A	Int./Div.	K	T						
29. Oppenheimer International Growth Fund	A	Int./Div.	M	T						
30. Proctor & Gamble Co stock	A	Dividend	J	T						
31. Royal Dutch Shell plc	A	Dividend	J	T						
32. Target Corp stock	A	Dividend								
33. The TJX Companies, Inc stock	A	Dividend	J	T						
34. Thornburg International Growth Fund	A	Dividend	J	T						

1. Income Gain Codes: (See Columns B1 and D4)	A=\$1,000 or less F=\$50,001 - \$100,000 J=\$15,000 or less N=\$250,001 - \$500,000 P1=\$250,001 - \$500,000,000	B=\$1,001 - \$2,500 G=\$100,001 - \$1,000,000 K=\$15,001 - \$50,000 O=\$500,001 - \$1,000,000	C=\$2,501 - \$5,000 H=\$1,000,001 - \$5,000,000 L=\$50,001 - \$100,000 P1=\$1,000,001 - \$5,000,000 P4=\$500,001 - \$1,000,000	D=\$5,001 - \$15,000 I2=\$1,000,001 - \$5,000,000 M=\$100,001 - \$250,000 P2=\$5,000,001 - \$25,000,000	E=\$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	N=\$250,001 - \$500,000 P1=\$250,001 - \$500,000,000	Q=Appraisal U=Book Value	R=Cost (Real Estate Only) V=Other	S=Assessment W=Estimated	T=Cash Market
3. Value Method Codes: (See Column C2)					

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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
35. Vanguard Wellesley Income Fund	C	Dividend	L	T					
36. Verizon Communications stock	A	Dividend	J	T					
37. The Walt Disney Company	C	Dividend	J	T					
38. Wells Fargo Large Company Growth Fund	A	Int./Div.	L	T					
39. Blackacre Partners, LLC		None							
40. Clark County, Washington municipal bond		None	K	T					
41. ELL, Inc	D	Dividend	M	W					
42. Harris County, Texas municipal bond		None	K	T					
43. Honeywell	A	Dividend	J	T					
44. Monticello Banking Company	A	Dividend	J	T					
45. Kerrick Bachert Stivers PSC		None	J	T					
46. Owensboro Kentucky Electric Light & Power municipal bond		None	J	T					
47. State Street Realty	F	Dividend	P1	W					
48. Rental property # 1 (Bowling Green,, Ky)	D	Rent	M	W					
49. US Bank cash accounts		None	J	T					
50. Visa	A	Dividend	J	T					
51. Merrill Lynch CMA	A	Interest	J	T					

1. Income Gain Codes:
(See Columns B1 and D4)
A = \$1,000 or less
F = \$50,001 - \$100,000
J = \$15,000 or less
N = \$250,001 - \$500,000
P1 = \$25,000,001 - \$50,000,000
2. Value Codes
(See Columns C1 and D3)
B = \$1,001 - \$2,500
G = \$100,001 - \$1,000,000
K = \$15,001 - \$50,000
O = \$500,001 - \$1,000,000
R = Cost (Real Estate Only)
V = Other
3. Value Method Codes
(See Column C2)
U = Book Value
W = Estimated
- C = \$2,501 - \$5,000
H1 = \$1,000,001 - \$5,000,000
L = \$50,001 - \$100,000
P1 = \$1,000,001 - \$5,000,000
P4 = More than \$50,000,000
S = Assessed
T = Cash Market
- D = \$5,001 - \$15,000
I2 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000
- E = \$15,001 - \$50,000

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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

Section VII. Investments and Trusts, Line 39 - Blackacre Partners, LLC was dissolved on 4/18/2014. A final distribution of \$8,800.00 was received on 4/15/14.
Section VII. Investments and Trusts, Line 45 - Kerrick Stivers Coyle, PLLC merged to form Kerrick Bachert Stivers PSC on 4/1/14. A note from Kerrick Bachert Stivers, PSC in the amount of \$98,893 was recieved in lieu of a cash distribution.

FINANCIAL DISCLOSURE REPORT

Page 8 of 8

Name of Person Reporting	Date of Report
Stivers, Greg N.	06/23/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ **Greg N. Stivers**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

1477

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		40	256	Notes payable to banks-secured (auto)		21	581
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	581	232	Notes payable to relatives			
Unlisted securities – see schedule		685	916	Notes payable to others			
Accounts and notes receivable:		98	983	Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		393	834
Real estate owned – see schedule		840	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		157	000	Merrill-Lynch line of credit		32	835
Cash value-life insurance				Education Loans		102	229
Other assets itemize:							
				Total liabilities		550	479
				Net Worth	2	852	908
Total Assets	3	403	387	Total liabilities and net worth	3	403	387
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		68	257	Are any assets pledged? (Add schedule)	Yes		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

Abbott Labs stock	\$ 10,246
Abbvie Inc. stock	13,663
AllianceBernstein Global Bond Fund	81,014
AllianzGI NFJ Dividend Interest & Premium Strategy Fund	11,257
Altria Group Inc. stock	13,546
Apple Inc. stock	230,107
Apple stock options	(3,437)
Atmos Energy Corp. stock	10,338
BlackRock Equity Dividend Fund	96,080
Cemex SAB de CV (ADR)	4,231
Chevron Corp. stock	45,092
ClearBridge Large Cap Value Fund	23,116
Colgate Palmolive stock	56,453
CSX Corp. stock	15,230
DNP Select Income Fund Inc. stock	46,440
Ebay Inc. stock	11,036
Express Scripts Holding Co. stock	13,970
Fidelity New Insights Fund	90,770
Fidelity Select Biotechnology Portfolio	39,731
Fidelity Value Fund	46,545
First Eagle Global Fund	42,537
Honeywell stock	8,487
Insmid stock	3,739
Monsanto Co. stock	36,989
Oppenheimer Developing Markets Fund	121,631
Oppenheimer Global Opportunities Fund	142,253
Oppenheimer International Bond Fund	38,408
Oppenheimer International Growth Fund	129,020
Oppenheimer Small & Mid Cap Value	4,000
Procter & Gamble Co. stock	8,394
Royal Dutch Shell plc	14,539
The TJX Companies, Inc. stock	6,459
The Walt Disney Company	3,764
Thornburg International Growth Fund	11,435
Vanguard Wellesley Income Fund	52,676
Verizon Communications stock	10,617
Visa stock	8,432
Wells Fargo Large Company Growth Fund	82,424
Total Listed Securities	<u>\$ 1,581,232</u>

Unlisted Securities

Clark County, Washington municipal bond	\$ 24,015
ELL, Inc.	224,836
Harris County, Texas municipal bond	24,228
Kerrick Bachert Stivers PSC	(1,160)
Monticello Banking Company	5,000
Owensboro Kentucky Electric Light & Power muni. bond	8,997
State Street Realty, LLC	400,000
Total Unlisted Securities	<u>\$ 685,916</u>

Real Estate Owned

Personal residence	\$ 700,000
Rental property	140,000
Total Real Estate Owned	<u>\$ 840,000</u>

Real Estate Mortgages Payable

Personal residence	\$ 300,688
Rental property	93,146
Total Real Estate Mortgages Payable	<u>\$ 393,834</u>

Pledged Assets

Abbott Labs stock	\$ 8,253
Abbvie Inc. Stock	10,948
Altria Group Inc. stock	13,546
Apple Inc. stock	64,456
Atmos Energy Corp	10,338
BlackRock Equity Dividend Fund	10,713
Clark County, Washington municipal bond	24,015
Chevron Corp. stock	25,766
ClearBridge Large Cap Value Fund	23,116
Colgate Palmolive stock	56,453
CSX Corp	15,230
Express Scripts Holding Co. stock	13,870
First Eagle Global Fund	16,505
Harris County, TX Muni Bond	24,228
Oppenheimer Senior Floating Rate Class C	34,408
Owensboro Ky Electric Light & Power muni. bond	8,997
Proctor & Gamble Co stock	8,394
Royal Dutch Shell, PLC	14,539
Total Pledges Assets	<u>\$ 383,775</u>

N.B. The assets listed above are pledged to secure a \$60,000 Merrill-Lynch line of credit.

1480

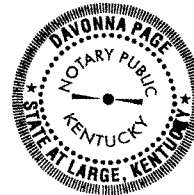
AFFIDAVIT

I, Greg N. Stivers, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 23, 2014
(DATE)

Greg N. Stivers
(NAME)

Devonna C. Page
(NOTARY)
Comm. Exp. 10-15-14
ID # 430013



**Senator Chuck Grassley
Questions for the Record**

**Madeline Cox Arleo
Nominee, U.S. District Court for the District of New Jersey**

1. According to your questionnaire, you recently began the first re-entry court for the District of New Jersey. In regards to your role, the U.S. Attorney for the District of New Jersey stated: “The judge is helping them to register for college, find apartments, and get jobs – and is literally taking them to a charter school to help them enroll their kids.”¹ Could you please explain in more detail what the re-entry court does, and your role in it?
2. There are a number of different theories explaining how judges should interpret the Constitution. While all nominees recite the mantra that they will apply the law to the facts, I’m looking for answers with a little more thought behind them.
 - a. How would you describe your judicial philosophy?
 - b. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement? Yes or no, and why?
3. What is the most important attribute of a judge, and do you possess it?
4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
6. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”²

¹

² *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

- i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”³
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”⁴
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁵
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

³ *Id.* 2689-2690.

⁴ *Id.* 2691.

⁵ *Id.* (internal citations omitted).

- ii. Will you commit to give this portion of the Court's opinion full force and effect?
- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"⁶
 - i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court's opinion full force and effect?
- 7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
- 8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
- 9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
- 10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.
- 11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
- 12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
- 13. If confirmed, how do you intend to manage your caseload?
- 14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
- 15. As a magistrate judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

⁶ *Id.* (internal citations omitted).

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".
 - a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.
17. Please describe with particularity the process by which these questions were answered.
18. Do these answers reflect your true and personal views?

**Senator Grassley
Questions for the Record**

**Victor Allen Bolden,
Nominee, U.S. District Judge for the District of Connecticut**

1. Following the Supreme Court’s decision in *Ricci v. DeStefano*, 557 U.S. 557 (2009), you said that the Court “ignored Congress” and that the Court’s “distorted sense of what makes a community prompted [it] to declare that [the] Title VII [rights] of whites had been violated after the City...for the first time in decades took steps *without* a court order to ensure that a hiring process for the Fire Department did not leave African-Americans out in the cold” (emphasis in original).
 - a. Given your comment, please explain your understanding of what Congress intended to do in Title VII with respect to when employees can intentionally discriminate.
 - b. Do you believe Congress intended to set a standard making it easier for employers to intentionally discriminate than the standard the Supreme Court announced in *Ricci*?
2. You contributed to a 1990 UCLA Law Review Article entitled “Racial Reflections: Dialogues in the Direction of Liberation.” Your subsection, “Salvaging Black Males,” argues that black men “have been disturbingly irresponsible” and are driven to violence and criminality because of a “pervasively white patriarchal society.”
 - a. Please explain what you meant by “pervasively white patriarchal society.”
 - b. In the same article, you wrote that “[b]lack men must take on the awesome task of saying to this society, which is dominated by a white patriarchy, that it must change drastically and that they will not cooperate in the continued oppression of women.” Please explain what you meant by this statement.
3. In a 2013 editorial for the *Connecticut Law Tribune*, you criticized the majority’s decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), and wrote that “states have too much power when it comes to deciding how and whether Americans will vote. With its undue emphasis on state sovereignty, the Supreme Court’s opinion in *Shelby County* will only serve to embolden those states determined to place barriers on those seeking to vote.”
 - a. Please explain the basis for your claim that “states have too much power when it comes to decision how and whether Americans will vote.” If you no longer believe this, please explain when and why you changed your mind.
 - b. Please explain the basis for your belief that the Supreme Court placed “undue emphasis on state sovereignty” in the *Shelby County* decision. If you no longer believe this, please explain when and why you changed your mind.

- c. Please explain the basis for your belief, as you argue in the article, that Justice Ginsburg's dissent, and not the majority opinion, provides the correct legal analysis. If you no longer believe that Justice Ginsburg's dissent provides the correct legal analysis, please explain when and why you changed your mind.
4. At a speech before the NAACP in 2006, you said in the context of affirmative action: "Under the guise of seeking racial neutrality, those who do not want race to be considered in addressing racial isolation and economic deprivation are leaving fewer options for those of us trying to bring about racial equality."
- a. Do you believe that opponents of affirmative action use "racial neutrality" as a "guise" to mask their true beliefs? If not, please explain to whom you were referring when you referred to "those" people who use "racial neutrality" as a "guise."
 - b. Do you believe that "racial isolation and economic deprivation" cannot be addressed except by race-conscious means? If not, please explain how race-neutral means can address "racial isolation and economic deprivation."
5. In 1990, the *Harvard BlackLetter Law Journal* published your article entitled "Judge Not, That Ye Be Not Judged: A Dramatic Call for a More Enlightened Approach to Judicial Decision-Making in Race Discrimination Cases." You noted that this article, which you wrote in the style of a script for a three-act play, "is intended to be a visionary statement on how judges ought to look at themselves and how they consider deciding cases." The article concludes with "God" expounding the four principles that define proper judicial decisionmaking. I asked you about this article at your confirmation hearing last week and want to follow-up on your answers. To each question, you testified that you would apply the facts to the law, but you did not answer my questions concerning whether you still believed the principles that you expounded upon in your article. Accordingly, please answer, with specificity, each subpart of this question.
- a. The first principle you wrote states: "[I]f the decision before [the judge] affects society's dispossessed and oppressed, the decision must be made in a way that eases their burden and does not add to their woes." Do you still believe that a judge should decide cases in this manner? If not, please explain why you believed so in 1990 and what has subsequently changed your perspective.
 - b. The second principle you wrote states: "[T]he judge must consider how she or he would want to be treated if they [sic] were in the same circumstance as the person they [sic] are about to affect with their [sic] decision." Do you still believe that a judge should decide cases in this manner? If not, please explain why you believed so in 1990 and what has subsequently changed your perspective.
 - c. The third principle you wrote states: "A judge has to be held accountable when their [sic] talent is not used to re-structure a legal system gone awry, if that is what needs to be done." Do you still believe that it is a judge's role is "to re-structure a legal system

gone awry”? If not, please explain why you did believe so in 1990 and what has subsequently changed your perspective.

- d. Please explain what you meant by the phrase “legal system gone awry.”
 - e. The fourth principle you wrote states: “[J]udges must be mindful of the ‘fruits’ or consequences of their decisions.” If not, please explain why you believed so in 1990 and what has subsequently changed your perspective.
6. What is the most important attribute of a judge, and do you possess it?
 7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
 8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.
 9. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedents and give them full force and effect, regardless of whether he or she personally agrees or disagrees with those precedents. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
 - b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the

¹ *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
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- e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁵
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

² *Id.* at 2689-2690.

³ *Id.* at 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?
10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
13. In your view, is it ever proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution? Please explain.
14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
15. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
16. If confirmed, how do you intend to manage your caseload?
17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
18. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
19. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.
 - a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.
20. Please describe with particularity the process by which these questions were answered.
21. Do these answers reflect your true and personal views?

**Senator Grassley
Questions for the Record**

**David J. Hale,
Nominee, U.S. District Judge for the Western District of Kentucky**

1. What is the most important attribute of a judge, and do you possess it?
2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.
4. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedents and give them full force and effect, regardless of whether he or she personally agrees or disagrees with those precedents. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
 - b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."²

¹ *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

² *Id.* 2689-2690.

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴
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 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources

³ *Id.* at 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
8. In your view, is it ever proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution? Please explain.
9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
10. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
11. If confirmed, how do you intend to manage your caseload?
12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
13. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
14. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.
 - a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

15. Please describe with particularity the process by which these questions were answered.
16. Do these answers reflect your true and personal views?

**Senator Grassley
Questions for the Record**

**Gregory N. Stivers,
Nominee, U.S. District Judge for the Western District of Kentucky**

1. What is the most important attribute of a judge, and do you possess it?
2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.
4. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedents and give them full force and effect, regardless of whether he or she personally agrees or disagrees with those precedents. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.
 - a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹
 - i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.
 - ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?
 - iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?
 - iv. Are you committed to upholding this precedent?
 - b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."²

¹ *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

² *Id.* 2689-2690.

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
 - e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁵
 - i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.
 - ii. Will you commit to give this portion of the Court’s opinion full force and effect?
5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources

³ *Id.* at 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
8. In your view, is it ever proper for judges to rely on foreign law or the views of the "world community" in determining the meaning of the Constitution? Please explain.
9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
10. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
11. If confirmed, how do you intend to manage your caseload?
12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
13. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
14. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".
 - a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.
 - b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

15. Please describe with particularity the process by which these questions were answered.
16. Do these answers reflect your true and personal views?

Questions for the Record
Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

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Nominations Hearing

July 29, 2014

Questions from Senator Lee

Questions for Madeline Cox Arleo (nominated for D. N.J.)

1. Ms. Cox, how would you describe your approach to statutory interpretation?
 - a. To what sources would you look in deciding a case that turned on interpretation of a federal statute?
 - b. Does a statute have a purpose beyond the purpose expressed in the enacted text of the legislation and if so, how would a judge be capable of adducing a statute's purpose?

Nominations Hearing

July 29, 2014

Questions from Senator Lee

Questions for Victor Allen Bolden (nominated for D. Conn.)

1. Mr. Bolden, as I understand it you were counsel for the city of New Haven in *Ricci v. DeStefano* (2009). After the Supreme Court decided the case, you criticized the outcome.
 - a. Can you elaborate on the reasons you were critical of the Court's decision?
 - b. In what circumstances do you believe a potential disparate impact justifies intentional discrimination?
 - c. Is your view of the doctrine of disparate impact at odds with that of the Supreme Court?

2. Mr. Bolden, you filed an amicus brief in the *Heller* case in which you argued that the Second Amendment did not protect an individual right to bear arms.
 - a. Can you explain your basis for that assertion?
 - b. In that same brief, you argued that an individual right to bear arms "would not address racial discrimination of criminal justice." To which types of racial discrimination were you referring, and in what ways did the Supreme Court's decision in *Heller*, which found that the Second Amendment protects an individual right to bear arms, not address those types of discrimination?

3. Mr. Bolden, in your 1990 *Harvard BlackLetter Law Journal* article entitled, "Judge Not, That Ye Be Not Judged," you lay out four primary jurisprudential guiding principles. These principles suggest that judges should look beyond the text of statutes or the merits of decisions and incorporate into their decision an analysis of the fruits or consequences of a decision.
 - a. What role does consequentialism have in your jurisprudence?
 - b. How could a judge take into account the consequences of his decision?
 - c. In what circumstances could the consequences of a ruling be dispositive—can you provide an example?

4. Mr. Bolden, in *Arizona v. U.S.*, you filed an *amicus* brief in support of the proposition that Arizona's SB 1070 immigration law infringed on Congress's enumerated powers, and was preempted by federal law.

- a. Can you articulate for the Committee your view of the doctrine of enumerated powers?
 - b. In what circumstances do you believe courts should strike down federal laws as infringing on purely state prerogatives?
 - c. Can you provide a few examples?
- 5. Mr. Bolden, you have filed amicus briefs in several cases in which the outcome would largely depend on whether the court found a fundamental right had been infringed.
 - a. When in your view should federal courts find that a fundamental right has been infringed?

Nominations Hearing

July 29, 2014

Questions from Senator Lee

Questions for David J. Hale (nominated for W.D. Ky.)

1. Mr. Hale, do you believe that the Constitution protects rights not expressly specified in the Constitution? If so, what is the textual vehicle for that — substantive due process, the Privileges or Immunities Clause, or elsewhere?
 - a. Do you believe that the Constitution provides for a right to privacy?
2. Mr. Hale, what are the limits on Congress's Commerce Clause power?
 - a. Do you believe that Congress has at any time overstepped its authority under that provision since *Wickard*, other than in *Lopez* and *Morrison*?

Nominations Hearing

July 29, 2014

Questions from Senator Lee

Questions for Gregory N. Stivers (nominated for W.D. Ky.)

1. Mr. Stivers, how would you describe your approach to statutory interpretation?
 - a. To what sources would you look in deciding a case that turned on interpretation of a federal statute?
 - b. Does a statute have a purpose beyond the purpose expressed in the enacted text of the legislation and if so, how would a judge be capable of adducing a statute's purpose?
2. Mr. Stivers, what role do the text and original meaning of a constitutional provision play in interpreting the Constitution?
 - a. To what extent are broadly worded constitutional provisions, such as the Equal Protection Clause, limited to the applications potentially foreseeable by their Framers, as opposed to announcing enduring principles that must subsequently be applied to new unfolding circumstances?

**Questions for the Record
Senator Chuck Grassley**

**Responses of Madeline Cox Arleo
Nominee, United States District Judge for the District of New Jersey**

- 1. According to your questionnaire, you recently began the first re-entry court for the District of New Jersey. In regards to your role, the U.S. Attorney for the District of New Jersey stated: "The judge is helping them to register for college, find apartments, and get jobs – and is literally taking them to a charter school to help them enroll their kids."¹ Could you please explain in more detail what the re-entry court does, and your role in it?**

Response: In response to the increasing recidivism rate of federal offenders, and following the models in other district courts around the country, the District of New Jersey established its first reentry court in 2013, for which I serve as presiding judge. Upon release from federal custody, the participants agree to participate in intensive supervision (semi-monthly court sessions for 52 weeks) and monitoring by the United States Probation Office in exchange for a one year reduction in their terms of supervised release. Prior to every court session, the reentry team, consisting of myself, Assistant United States Attorneys and support staff, an assistant federal public defender, and Probation officers, meet to review the progress and needs of each participant, including education, employment and housing. We also consider imposition of swift sanctions for violation of program rules. We graduated our first class of participants earlier this year. All remain gainfully employed and none have reoffended.

- 2. There are a number of different theories explaining how judges should interpret the Constitution. While all nominees recite the mantra that they will apply the law to the facts, I'm looking for answers with a little more thought behind them.**

- a. How would you describe your judicial philosophy?**

Response: Having served as Magistrate Judge for fourteen years, I have tried to develop a judicial philosophy that emphasizes fairness and impartiality, respect for the rule of law, adherence to precedent and respect for all who appear in court. My record demonstrates that I understand the importance of adherence to the precedent of the Third Circuit and the Supreme Court. If confirmed, I will continue to approach cases with this judicial philosophy.

- b. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement? Yes or no, and why?**

Response: I do not know the full context of this quotation and therefore cannot state whether I agree or disagree with this statement. However, I believe that a judge should always decide cases based on a thorough review of the record and application of settled law to the facts.

3. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is integrity. A judge must promptly and dispassionately decide all cases without regard to personal views or beliefs. I believe that throughout my fourteen years as a Magistrate Judge, I have demonstrated that I have this attribute.

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should be calm, respectful, and measured at all times, regardless of the conduct of others in the courtroom, be willing to listen carefully, and conduct all proceedings fairly and with authority. I believe that throughout my fourteen years as a Magistrate Judge, I have demonstrated that I have this temperament.

5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: In my fourteen years serving as a Magistrate Judge, I have demonstrated an unwavering commitment to faithfully applying the precedent of the Third Circuit and the Supreme Court. If confirmed as a District Court Judge, I will continue to do so.

6. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."²

i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

² *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

Response: Yes.

- ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?**

Response: My understanding is that Justice Kennedy was referring to marriages made lawful by the State.

- iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes.

- iv. Are you committed to upholding this precedent?**

Response: Yes. If confirmed, I would uphold *Windsor* and all Supreme Court precedent.

- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”³**

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes. If confirmed, I would uphold *Windsor* and all Supreme Court precedent.

- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”⁴**

³ *Id.* 2689-2690.

⁴ *Id.* 2691.

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes. If confirmed, I would uphold *Windsor* and all Supreme Court precedent.

- d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'" ⁵

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes. If confirmed, I would uphold *Windsor* and all Supreme Court precedent.

- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'" ⁶

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

⁵ *Id.* (internal citations omitted).

⁶ *Id.* (internal citations omitted).

Response: Yes. If confirmed, I would uphold *Windsor* and all Supreme Court precedent.

- 7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would consider the text of the applicable constitutional provision, statute, or regulation. If the text is clear and unambiguous, I would apply the plain meaning to the facts of the case. If not, I would look to guidance from the Supreme Court and Third Circuit in analogous cases. If there was no analogous authority, I would consider precedent from other circuits and district courts.

- 8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the applicable precedent without reservation.

- 9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes enacted by Congress are presumed constitutional. A federal court should only declare a statute unconstitutional if the statute exceeds congressional authority or violates a constitutional provision.

- 10. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: No. If confirmed, I would not rely on foreign law or be guided by the views of the “world community.” I would follow the precedent of the Supreme Court and Third Circuit.

- 11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: During my fourteen years of service as a Magistrate Judge, I have demonstrated an unwavering commitment to following precedent and the rule of law and will continue to do so if I am confirmed as a District Judge.

- 12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: My record as a Magistrate Judge demonstrates that I have consistently sought to be fair and impartial to all who have appeared before me and have never let my personal views play a role in my decision making process. I will continue to do so if I am confirmed as a District Judge.

13. If confirmed, how do you intend to manage your caseload?’

Response: As a Magistrate Judge, I have had an active role in managing the court’s docket, which includes many complex civil and criminal cases. I have done this by meeting early with counsel to resolve cases by settlement, if possible; promptly deciding all discovery and dispositive motions; and imposing firm scheduling orders to move cases to trial. If confirmed as a District Judge, I will continue to use those strategies and work with the Magistrate Judges to manage my caseload.

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: The judge plays a key role in controlling the pace and conduct of litigation. If confirmed, I would use the strategies outlined in the Answer to Question 13 above to control my docket.

15. As a magistrate judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: Before reaching a decision, I carefully review the entire record, including all written submissions by the parties and transcripts of any hearings. I review all the relevant law, including the text of any statutory provisions, and all precedent within the Third Circuit, the Supreme Court and any relevant authority from other circuits. If there is oral argument, I am prepared to listen to the arguments made by the litigants or counsel and ask questions on any issues that are not addressed in the briefs. After carefully considering the facts and the law, I will either make an oral ruling from the bench or promptly issue a written opinion. My rulings, whether oral or written, set forth the facts, the applicable law and the reasons for my decision.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes,

please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

17. Please describe with particularity the process by which these questions were answered.

Response: On August 6, 2014, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed and drafted all of my answers. Thereafter, I submitted my answers to the Office of Legal Policy and made minor revisions before submitting my answers to the Committee.

18. Do these answers reflect your true and personal views?

Response: Yes.

**Questions for the Record
Senator Ted Cruz**

**Responses of Madeline Cox Arleo
Nominee, United States District Judge for the District of New Jersey**

- 1. Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: Having served as Magistrate Judge for fourteen years, I have tried to develop a judicial philosophy that emphasizes fairness and impartiality, respect for the rule of law, adherence to precedent, and respect for all who appear in court. I do not possess sufficient knowledge of the judicial philosophies of justices on the Warren, Burger or Rehnquist courts to comment as to whether their philosophies are analogous to mine.

- 2. Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: If confirmed as a District Court Judge, I would look to the original public meaning consistent with the Supreme Court's holding in such cases as *District of Columbia v. Heller*, 554 U.S. 570 (2008), in interpreting the Constitution.

- 3. If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: I would not overrule binding precedent.

- 4. Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: If confirmed, I would follow all binding precedent, including *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985). Any personal views would not come into play in the judicial decision making process.

- 5. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: The Supreme Court has addressed the scope of Congress' power under the Commerce Clause in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), among other cases. In these cases, the Supreme Court struck down the statute at issue because of the absence of a nexus to economic activity. If confirmed, I would adhere to this precedent and any personal views would play no role in my decision making process.

- 6. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: The Supreme Court held in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952) that the President's power to issue executive orders and take executive action must come from the United States Constitution or from Congress. If confirmed, I will follow that precedent.

7. When do you believe a right is “fundamental” for purposes of the substantive due process doctrine?

Response: The Supreme Court has determined that a right is “fundamental” for the purposes of substantive due process when it is “objectively, deeply rooted in this Nation’s history and tradition . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted). If confirmed, I will follow that precedent.

8. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: In *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1995), the Supreme Court held that legislative classifications based on race, alienage, national origin and gender or laws that impinge on personal rights protected by the Constitution are subject to heightened scrutiny. If confirmed, I will follow that precedent.

9. Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I do not have any expectations as to whether in the future, the use of racial preferences will no longer be necessary in public higher education. If confirmed, I will follow *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) and all other Supreme Court precedent.

**Questions for the Record
Senator Lee**

**Responses of Madeline Cox Arleo
Nominee, United States District Judge for the District of New Jersey**

1. Ms. Cox, how would you describe your approach to statutory interpretation?

Response: Having served as a Magistrate Judge for fourteen years, my approach is guided by the decisions of the Supreme Court and the Third Circuit on statutory interpretation. I consider all sources that those Courts have utilized, including an examination of the plain meaning of a statute, canons of statutory construction, controlling precedent of the Supreme Court and the Third Circuit, and persuasive authority from other circuits.

a. To what sources would you look in deciding a case that turned on interpretation of a federal statute?

Response: I would look first to the plain language of the statute. If the language was clear, my inquiry would end and I would apply the law to the facts of the case. If there was any ambiguity, I would consider the controlling law of the Supreme Court and of the Third Circuit. I would also consider any canons of statutory construction that those courts have approved. If there was no controlling law, I would consider persuasive authority from other courts considering the issue.

b. Does a statute have a purpose beyond the purpose expressed in the enacted text of the legislation and if so, how would a judge be capable of adducing a statute's purpose?

Response: If the purpose is clearly stated in the text of the legislation, the court should accept that purpose and should look no further. If there is ambiguity in the language of the statute, the court should look for interpretive guidance from the Supreme Court, binding law of the circuit, persuasive law from other circuits, and only as a last resort, consider legislative history.

Senator Grassley
Questions for the Record

Victor Allen Bolden,
Nominee, U.S. District Judge for the District of Connecticut

1. Following the Supreme Court's decision in *Ricci v. DeStefano*, 557 U.S. 557 (2009), you said that the Court "ignored Congress" and that the Court's "distorted sense of what makes a community prompted [it] to declare that [the] Title VII [rights] of whites had been violated after the City...for the first time in decades took steps *without* a court order to ensure that a hiring process for the Fire Department did not leave African-Americans out in the cold" (emphasis in original).

- a. Given your comment, please explain your understanding of what Congress intended to do in Title VII with respect to when employees can intentionally discriminate.

Response: I became involved in this case after the Supreme Court granted certiorari and made these comments in my professional capacity as the City of New Haven's lawyer, knowing that my client had for several decades been a party to successful disparate impact litigation brought by African-Americans regarding the hiring practices of the New Haven Department of Fire Services.

On the issue of when Congress intended to permit employers to discriminate intentionally, in *Ricci v. DeStefano*, the Supreme Court held that "under Title VII, before an employer can engage in intentional discrimination for the asserted purpose of avoiding or remedying an unintentional disparate impact, the employer must have a strong basis in evidence to believe it will be subject to disparate-impact liability if it fails to take the race-conscious, discriminatory action." *Ricci v. DeStefano*, 557 U.S. 557, 585 (2009).

- b. Do you believe Congress intended to set a standard making it easier for employers to intentionally discriminate than the standard the Supreme Court announced in *Ricci*?

Response: No. I believe Congress intended to ensure that both the disparate treatment and disparate impact elements of Title VII were properly enforced. As the Supreme Court recognized in *Ricci v. DeStefano*, 557 U.S. 557 (2009): "Our task is to provide guidance to employers and courts for situations when these two prohibitions [against disparate treatment and disparate impact] could be in conflict absent a rule to reconcile them. In providing this guidance our decision must be consistent with the important purpose of Title VII – that the workplace be an environment free of discrimination, where race is not a barrier to opportunity." 557 U.S. at 580.

2. You contributed to a 1990 UCLA Law Review Article entitled "Racial Reflections: Dialogues in the Direction of Liberation." Your subsection, "Salvaging Black Males," argues that black men "have been disturbingly irresponsible" and are

driven to violence and criminality because of a “pervasively white patriarchal society.”

a. Please explain what you meant by “pervasively white patriarchal society.”

Response: My contribution to that law review article was based on a writing assignment from a law school class more than twenty-five years ago. The phrase “pervasively white patriarchal society” referred to a society where white males were substantially more likely to be in positions of power than others in society. This phrase is not one I use now or have used in more than twenty-five years.

b. In the same article, you wrote that “[b]lack men must take on the awesome task of saying to this society, which is dominated by a white patriarchy, that it must change drastically and that they will not cooperate in the continued oppression of women.” Please explain what you meant by this statement.

Response: The statement referred to my opinion that African-American men must take responsibility for their lives and their actions, regardless of what the larger society does. The statement challenges African-American men to be concerned about society being fair for and to women, ensuring that women are treated with dignity and respect.

3. In a 2013 editorial for the *Connecticut Law Tribune*, you criticized the majority’s decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), and wrote that “states have too much power when it comes to deciding how and whether Americans will vote. With its undue emphasis on state sovereignty, the Supreme Court’s opinion in *Shelby County* will only serve to embolden those states determined to place barriers on those seeking to vote.”

a. Please explain the basis for your claim that “states have too much power when it comes to decision how and whether Americans will vote.” If you no longer believe this, please explain when and why you changed your mind.

Response: As with any editorial published by the Connecticut Law Tribune, this editorial reflected the opinions of a majority of the paper’s editorial board. A majority of the editorial board had concerns with the long lines many voters experienced and the delays in counting votes during the 2012 elections. The editorial I authored on behalf of the editorial board was written with this context in mind. If confirmed, I would faithfully apply Supreme Court and Second Circuit precedent in this area of the law, as I would all areas of the law, without regard to my personal views or the viewpoints I expressed on behalf of the editorial board.

b. Please explain the basis for your belief that the Supreme Court placed “undue emphasis on state sovereignty” in the *Shelby County* decision. If you no longer believe this, please explain when and why you changed your mind.

Response: Please see response to Question 3a.

- c. Please explain the basis for your belief, as you argue in the article, that Justice Ginsburg's dissent, and not the majority opinion, provides the correct legal analysis. If you no longer believe that Justice Ginsburg's dissent provides the correct legal analysis, please explain when and why you changed your mind.

Response: I appreciate the fact that the role of a writer on behalf of an editorial board is far different than that of a judge. As a judge, only the majority opinion is binding precedent and, if confirmed, I would have no problem faithfully following Supreme Court and Second Circuit precedent, regardless of any personal views I might have.

4. At a speech before the NAACP in 2006, you said in the context of affirmative action: "Under the guise of seeking racial neutrality, those who do not want race to be considered in addressing racial isolation and economic deprivation are leaving fewer options for those of us trying to bring about racial equality."

- a. Do you believe that opponents of affirmative action use "racial neutrality" as a "guise" to mask their true beliefs? If not, please explain to whom you were referring when you referred to "those" people who use "racial neutrality" as a "guise."

Response: No. Earlier, the speech specifically refers only to those "targeting for elimination *all* programs designed to end racial inequality," including "scholarship programs, minority recruiting programs and summer enrichment programs." (emphasis in original). I made this speech in my capacity as General Counsel for the NAACP Legal Defense & Educational Fund, Inc.

- b. Do you believe that "racial isolation and economic deprivation" cannot be addressed except by race-conscious means? If not, please explain how race-neutral means can address "racial isolation and economic deprivation."

Response: No. In that same speech, just a few paragraphs later, I stated the following: "Let me be clear. I am not saying that race-targeted programs are the *only* way to address racial inequality. My point is that we cannot and must not eliminate [scholarship programs, minority recruiting programs and summer enrichment programs] as part of the broader solution to racial inequality in this nation." (emphasis in original).

5. In 1990, the *Harvard BlackLetter Law Journal* published your article entitled "Judge Not, That Ye Be Not Judged: A Dramatic Call for a More Enlightened Approach to Judicial Decision-Making in Race Discrimination Cases." You noted that this article, which you wrote in the style of a script for a three-act play, "is intended to be a visionary statement on how judges ought to look at themselves and how they consider deciding cases." The article concludes with "God" expounding the four principles that define proper judicial decisionmaking. I asked you about this article at your confirmation hearing last week and want to follow-up on your answers. To each question, you testified that you would apply the facts to the law, but you did not answer my questions concerning whether you still believed the principles that

you expounded upon in your article. Accordingly, please answer, with specificity, each subpart of this question.

- a. The first principle you wrote states: “[I]f the decision before [the judge] affects society’s dispossessed and oppressed, the decision must be made in a way that eases their burden and does not add to their woes.” Do you still believe that a judge should decide cases in this manner? If not, please explain why you believed so in 1990 and what has subsequently changed your perspective.

Response: Thank you for the opportunity to provide clarity on this unusual law review article and I apologize for any confusion this work of fiction has caused nearly a quarter-century later. I do not believe a judge should base his or her decisions on the principles discussed in the article. Instead, I wrote this play many years ago as a law student and it has not informed my professional work as a lawyer nor would it inform my work as a judge, if I were confirmed. My years of practice as a lawyer have instilled in me an appreciation of the importance of judges being fair and impartial and deciding matters based on the relevant facts and applicable law.

- b. The second principle you wrote states: “[T]he judge must consider how she or he would want to be treated if they [sic] were in the same circumstance as the person they [sic] are about to affect with their [sic] decision.” Do you still believe that a judge should decide cases in this manner? If not, please explain why you believed so in 1990 and what has subsequently changed your perspective.

Response: Please see response to Question 5a.

- c. The third principle you wrote states: “A judge has to be held accountable when their [sic] talent is not used to re-structure a legal system gone awry, if that is what needs to be done.” Do you still believe that it is a judge’s role is “to re-structure a legal system gone awry”? If not, please explain why you did believe so in 1990 and what has subsequently changed your perspective.

Response: Please see response to Question 5a.

- d. Please explain what you meant by the phrase “legal system gone awry.”

Response: Please see response to Question 5a.

- e. The fourth principle you wrote states: “[J]udges must be mindful of the ‘fruits’ or consequences of their decisions.” If not, please explain why you believed so in 1990 and what has subsequently changed your perspective.

Response: Please see response to Question 5a.

6. What is the most important attribute of a judge, and do you possess it?

Response: It is essential for a judge to be fair and impartial and to decide matters based on the relevant facts and applicable law. I do possess this attribute and have

demonstrated a commitment to being fair and impartial throughout my professional career. For example, as the Corporation Counsel for the City of New Haven, Connecticut, I have issued formal legal opinions for the City of New Haven on a variety of issues fairly, impartially and based on the relevant facts and applicable law.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be fair, even-tempered, open-minded and capable of deciding every matter based on the relevant facts and applicable law. A judge also should be diligent in ascertaining all relevant precedent before making a decision, and treat litigants, fellow judges and court personnel in a respectful and professional manner. If I am fortunate enough to be confirmed, I believe my professional record demonstrates that I meet this standard.

8. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.**

Response: I am fully committed to following the precedents of higher courts faithfully and giving them full force and effect, regardless of any personal feelings I might have.

9. **Every nominee who comes before this Committee assures me that he or she will follow all applicable precedents and give them full force and effect, regardless of whether he or she personally agrees or disagrees with those precedents. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.**

- a. **In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹**

- i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Response: Yes.

- ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?**

Response: It is my understanding that the Court's opinion is referring to same-sex marriages made lawful by state law.

¹ *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

Response: Yes.

iv. Are you committed to upholding this precedent?

Response: Yes. If confirmed, I would be committed to upholding faithfully and fully the precedent in *Windsor* as well as all other precedent of the Supreme Court and the Second Circuit.

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. If confirmed, I would apply faithfully this portion and all portions of the Supreme Court’s decision in *Windsor* as well as all other decisions of the Supreme Court and the Second Circuit.

c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

ii. Will you commit to give this portion of the Court’s opinion full force and effect?

² *Id.* at 2689-2690.

³ *Id.* at 2691.

Response: Yes. If confirmed, I would apply faithfully this portion and all portions of the Supreme Court's decision in *Windsor* as well as all other decisions of the Supreme Court and the Second Circuit.

- d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'" ⁴

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes. If confirmed, I would apply faithfully this portion and all portions of the Supreme Court's decision in *Windsor* as well as all other decisions of the Supreme Court and the Second Circuit.

- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'" ⁵

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes. If confirmed, I would apply faithfully this portion and all portions of the Supreme Court's decision in *Windsor* as well as all other decisions of the Supreme Court and the Second Circuit.

10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

Response: If confirmed and faced with a case of first impression, I would begin with the text and structure of the constitutional, statutory or regulatory provision at issue, to the extent that the case involved such a provision, and look for its plain meaning. To the extent that the plain meaning of the relevant text did not yield a clear answer, I would apply the means of statutory construction adopted by the Supreme Court and the Second Circuit. I also would review and apply, to the extent applicable, closely related or analogous Supreme Court and Second Circuit decisions as well as such decisions of other circuits.

- 11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed, I would apply that decision regardless of my personal beliefs.

- 12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A statute enacted by Congress is presumed to be constitutional. A federal court should declare a statute enacted by Congress unconstitutional only where the constitutional question cannot be avoided and the statute is clearly inconsistent with the Constitution.

- 13. In your view, is it ever proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution? Please explain.**

Response: If confirmed, I would interpret the meaning of the Constitution consistent with the Supreme Court and Second Circuit precedent applicable to the specific provision at issue. As a result, unless a specific Supreme Court or Second Circuit decision requires that a district judge rely on foreign law or the views of the “world community” in determining the meaning of the Constitution, there is no basis for doing so.

- 14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I believe unequivocally in the rule of law. It is essential to this nation’s success and I am committed to maintaining it. If confirmed, I would only issue decisions grounded in precedent and the text of the law, rather than any ideology or other motivation. In my professional career, I have presented arguments to courts grounded in precedent and the text of the law. Also, as the City of New Haven’s Corporation Counsel, I have issued formal legal opinions to various public officials and these legal opinions have been grounded in precedent and the text of the law.

- 15. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: If confirmed, I would set aside any personal views and treat all litigants fairly, regardless of their background or circumstances. I would decide cases solely based on the relevant facts and the applicable law. As my professional record demonstrates, I would fulfill my professional obligations without regard to my personal views, if any. For example, as the City of New Haven's Corporation Counsel, I have issued formal legal opinions based on the relevant facts and the applicable law.

16. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would manage my caseload by establishing reasonable and efficient schedules at the outset of a case's filing and identifying unique issues likely to complicate a case's prompt resolution. I would encourage the parties in complex litigation to engage in periodic status conferences and would use Magistrate Judges to assist with case management, facilitate an efficient discovery process and engage the parties in settlement discussions, if a resolution short of a trial seems possible. I also would try to decide motions, especially dispositive ones, as promptly as possible.

17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. Judges can and do play a significant role in controlling the pace and conduct of litigation. If confirmed, I would manage my caseload by establishing reasonable and efficient schedules at the outset of a case's filing and identifying unique issues likely to complicate a case's prompt resolution. I would encourage the parties in complex litigation to engage in periodic status conferences and would use Magistrate Judges to assist with case management, facilitate an efficient discovery process and engage the parties in settlement discussions, if a resolution short of a trial seems possible. I also would try to decide motions, especially dispositive ones, as promptly as possible. All of these steps would contribute to controlling the pace and conduct of litigation, ensuring that cases filed are either tried or resolved as quickly as possible to minimize the time and expense of litigation.

18. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: If confirmed, I would decide cases by considering the relevant facts presented by the parties and applying the binding precedent to those facts. In making decisions, I would consider the submissions of the parties and conduct independent legal research to ensure that I apply binding precedent to the case. The most difficult part of the transition would be developing greater knowledge of criminal law, given that my legal practice has been focused primarily on civil matters.

19. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To

increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

- 20. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on August 5, 2014. After reviewing them, I conducted legal research and drafted my answers. I reviewed my responses with a representative of the Office of Legal Policy of the Department of Justice. I continued reviewing and editing my responses until I authorized the Office of Legal Policy to submit them to the Committee on my behalf.

- 21. Do these answers reflect your true and personal views?

Response: Yes.

**Responses of Victor Allen Bolden
Nominee to the United States District Court for the District of Connecticut
To The Written Questions of Senator Ted Cruz**

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If confirmed, my judicial philosophy would be to be fair and impartial and to decide matters based on the relevant facts and applicable law, consistent with binding Supreme Court and Second Circuit precedent. While I have read numerous Supreme Court opinions from the Warren, Burger and Rehnquist Courts, I have not undertaken the study necessary to identify a specific Supreme Court justice's philosophy most analogous to my own.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed, I would follow binding Supreme Court and Second Circuit precedent on how to interpret the United States Constitution. Binding Supreme Court precedent recognizes originalism as a means of interpreting constitutional provisions. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (reviewing the original public meaning of the Second Amendment). I would faithfully apply binding Supreme Court precedent on this area of the law.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: District judges must follow precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit. If confirmed, I would not overrule the precedent of these higher authorities.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: This statement is an excerpt from an opinion by the Supreme Court and reflects binding precedent. If confirmed, I would follow that precedent and any other binding case law, such as *Printz v. United States*, 521 U.S. 899 (1997) and *New York v. United States*, 505 U.S. 14 (1992), to cases involving state sovereign interests and judicially enforceable limitations on federal power.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has recognized that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, cannot be exercised in the absence of a

nexus to economic activity. See *United States v. Morrison*, 529 U.S. 598, 613 (2000) (striking down a federal civil remedy for victims of gender-motivated violence because “[g]ender-motivated crimes of violence are not, in any sense of the phrase, economic activity.”); *United States v. Lopez*, 514 U.S. 549, 567 (1995) (striking down legislation regulating firearms in school zones because this is not “an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce.”). In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Supreme Court also held that Congress could regulate drug activity even at the local level because “failure to regulate that class of activity would undercut” other broader interests affecting economic activity. See 545 U.S. at 18, 26; *id.* at 37 (Justice Scalia, concurring) (“Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.”). If confirmed, I would faithfully follow Supreme Court and Second Circuit precedent in this area of the law.

What are the judicially enforceable limits on the President’s ability to issue executive orders or executive actions?

Response: The Supreme Court has recognized that presidential authority to issue executive orders or actions “must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). Justice Jackson’s concurrence in that case established the tripartite scheme for evaluating the legitimacy of the executive action at issue. See *Medellin v. Texas*, 552 U.S. 491, 637-638 (2008). If confirmed, I would faithfully apply Supreme Court precedent in this area of the law.

When do you believe a right is “fundamental” for purposes of the substantive due process doctrine?

Response: The Supreme Court has recognized that there are “fundamental rights and liberties which are objectively, deeply rooted in this Nation’s history and tradition,” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted), and which are “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed[.]” *Id.* If confirmed, I would faithfully apply Supreme Court precedent in this area of the law.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has recognized two levels of heightened scrutiny above rational basis review under the Equal Protection Clause: strict scrutiny and intermediate scrutiny. Strict scrutiny is applied to classifications, such as race, which are “so seldom relevant to the achievement of any legitimate state purpose,” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Intermediate scrutiny is applied to classifications including gender, which “frequently bear[] no relation to ability to perform or contribute to society.” *Id.* at 440-41. If confirmed, I would faithfully apply Supreme Court precedent in this area of the law.

Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed, I would faithfully apply Supreme Court precedent in this area of the law, such as *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013). Any personal expectations would have no bearing on my judicial decision-making.

Nominations Hearing

July 29, 2014

Questions from Senator Lee

Questions for Victor Allen Bolden (nominated for D. Conn.)

- 1. Mr. Bolden, as I understand it you were counsel for the city of New Haven in *Ricci v. DeStefano* (2009). After the Supreme Court decided the case, you criticized the outcome.**

- a. Can you elaborate on the reasons you were critical of the Court's decision?**

Response: Thank you for the opportunity to clarify. On January 15, 2009, when I became counsel for the City of New Haven, the *Ricci v. DeStefano* litigation had been underway for several years, and the Supreme Court already had granted certiorari. Following the Supreme Court's decision, in my official capacity as the City of New Haven's lawyer, I expressed concern about two aspects of the outcome: (1) reconciling the Supreme Court's decision with the City of New Haven's decades-long litigation history stemming from racial discrimination with respect to African Americans in the New Haven Department of Fire Services; and (2) implementing the Supreme Court's decision without entangling the City of New Haven in further litigation, such as follow-on lawsuits regarding disparate impact liability over the same civil service examinations at issue in the *Ricci* case.

Regardless of these concerns, as my record demonstrates, I fulfilled my professional obligations and, following the Supreme Court's decision in the *Ricci* case, I helped ensure that the City of New Haven complied with the Supreme Court's order and defended against collateral attacks on the Supreme Court's decision in *Ricci*. If confirmed, I would faithfully apply Supreme Court and Second Circuit precedent, as I would all areas of the law.

- b. In what circumstances do you believe a potential disparate impact justifies intentional discrimination?**

Response: In *Ricci*, the Supreme Court held that "under Title VII, before an employer can engage in intentional discrimination for the asserted purpose of avoiding or remedying an unintentional disparate impact, the employer must have a strong basis in evidence to believe it will be subject to disparate-impact liability if it fails to take the race-conscious, discriminatory action." *Ricci v. DeStefano*, 557 U.S. 557, 585 (2009). If confirmed, I would faithfully apply Supreme Court and Second Circuit precedent in this area of the law, as I would all areas of the law.

- c. **Is your view of the doctrine of disparate impact at odds with that of the Supreme Court?**

Response: No.

2. **Mr. Bolden, you filed an amicus brief in the *Heller* case in which you argued that the Second Amendment did not protect an individual right to bear arms.**

- a. **Can you explain your basis for that assertion?**

Response: On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), I worked on an *amicus curiae* brief in *District of Columbia v. Heller*. The decision of whether to file the brief ultimately was not made by me. The organization filed the brief to highlight the problem of gun violence facing African-Americans in densely populated urban centers like the District of Columbia. The brief argued that an individual right to bear arms existed within the context of the “well regulated Militia” referenced in the text of the Second Amendment, based on binding precedent prior to the Supreme Court’s decision in *District of Columbia v. Heller*. See, e.g., *United States v. Miller*, 307 U.S. 174, 178 (1939).

I appreciate the difference between the role of an advocate and the role of a judge. If confirmed, I would faithfully apply the Supreme Court’s decision in *District of Columbia v. Heller* and other Second Amendment jurisprudence, as I would all areas of the law, rather than the viewpoints expressed on behalf of any former client.

- b. **In that same brief, you argued that an individual right to bear arms “would not address racial discrimination of criminal justice.” To which types of racial discrimination were you referring, and in what ways did the Supreme Court’s decision in *Heller*, which found that the Second Amendment protects an individual right to bear arms, not address those types of discrimination?**

Response: The brief referred to any issues related to the “discriminatory enforcement of firearm laws” or “the history surrounding the adoption of early gun control laws, or “even the Second Amendment itself,” to the extent such history “is tainted by racial discrimination,” a matter that had been raised by others, but not the NAACP Legal Defense & Educational Fund, Inc. The brief did not suggest that the Second Amendment should be interpreted to address issues of racial discrimination. Instead, the brief recognized that the Supreme Court’s “traditional vehicles” for addressing racial discrimination, “the Equal

Protection Clause of the Fourteenth Amendment, or where the actions of the federal government are at issue, the Due Process Clause of the Fifth Amendment,” should continue to be interpreted to address any such issues, to the extent warranted and consistent with Supreme Court precedent. If confirmed, I would faithfully apply the Supreme Court’s decision in *District of Columbia v. Heller* and other Second Amendment jurisprudence, as I would all areas of the law.

3. Mr. Bolden, in your 1990 *Harvard BlackLetter Law Journal* article entitled, “Judge Not, That Ye Be Not Judged,” you lay out four primary jurisprudential guiding principles. These principles suggest that judges should look beyond the text of statutes or the merits of decisions and incorporate into their decision an analysis of the fruits or consequences of a decision.

- a. What role does consequentialism have in your jurisprudence?

Response: If confirmed, consequentialism would have no role in my jurisprudence, unless binding Supreme Court and Second Circuit precedent required a district court to do so.

- b. How could a judge take into account the consequences of his decision?

Response: Please see response to Question 3a.

- c. In what circumstances could the consequences of a ruling be dispositive—can you provide an example?

Response: Please see response to Question 3a.

4. Mr. Bolden, in *Arizona v. U.S.*, you filed an *amicus* brief in support of the proposition that Arizona’s SB 1070 immigration law infringed on Congress’s enumerated powers, and was preempted by federal law.

- a. Can you articulate for the Committee your view of the doctrine of enumerated powers?

Response: For many years prior to my becoming the Corporation Counsel of the City of New Haven, the City of New Haven had been active on the issue of immigration. Consistent with these efforts, the Mayor of the City of New Haven decided that the city should join a number of municipalities and file an *amicus curiae* brief in *Arizona v. U.S.*, regarding Arizona’s S.B. 1070 and, on behalf of my client, I signed on to this brief, which had been drafted by others. The brief therefore represents a position on behalf of my client, the City of New Haven, and

expresses my client's concern that certain enforcement requirements with respect to immigration pose considerable legal challenges for municipalities.

In *Arizona v. U.S.*, on the issue of Congress' power in the area of immigration, the Supreme Court held that: "The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens. This authority rests, in part, on the National Government's constitutional power to 'establish an uniform Rule of Naturalization'." *Arizona v. U.S.*, 132 S. Ct. 2492, 2498 (2012) (quoting Article I, Section 8, clause 4 of the U.S. Constitution) (other citations omitted). If confirmed, I would faithfully follow binding Supreme Court and Second Circuit precedent on the issue of Congress' enumerated powers, as I would any other issue, rather than the viewpoint expressed on behalf of any former client.

b. In what circumstances do you believe courts should strike down federal laws as infringing on purely state prerogatives?

Response: In *Arizona v. U.S.*, the Supreme Court recognized that: "[f]ederalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect." *Arizona v. U.S.*, 132 S. Ct. 2492, 2500 (2012). Indeed, there have been instances where courts have struck down federal laws, infringing on state prerogatives. See, e.g., *United States v. Morrison*, 529 U.S. 598 (2000); *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 488 U.S. 1041 (1992). If confirmed, I would faithfully follow binding Supreme Court and Second Circuit precedent on the issue of when state sovereignty has been infringed upon by federal law.

c. Can you provide a few examples?

Response: Please see response to Question 4b.

5. Mr. Bolden, you have filed amicus briefs in several cases in which the outcome would largely depend on whether the court found a fundamental right had been infringed.

a. When in your view should federal courts find that a fundamental right has been infringed?

Response: As the Supreme Court has recognized, the Due Process Clause of the Fourteenth Amendment provides for "heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v.*

Glucksberg, 521 U.S. 702, 720 (1997) (citations omitted). These “fundamental rights and liberty interests” may not be infringed upon “unless the infringement is narrowly tailored to serve a compelling state interest.” *Id.* at 721 (citations and internal marks omitted). As a result, if government interferes with a fundamental right without such interference being narrowly tailored to serve a compelling state interest, then such infringement cannot survive constitutional scrutiny.

Senator Grassley
Questions for the Record

David J. Hale,
Nominee, U.S. District Judge for the Western District of Kentucky

1. What is the most important attribute of a judge, and do you possess it?

Response: I consider the ability to decide a case fairly and impartially based upon applicable law and precedent to be the most important attribute of a judge. I believe that I have demonstrated throughout my career that I possess the qualities of fairness, impartiality and respect for precedent.

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: I believe that a judge should be patient, courteous and composed. Litigants and lawyers should always be treated fairly and respectfully. I believe that I have demonstrated throughout my career that I meet these standards.

3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.

Response: If confirmed, I would be committed to following all of the precedents of the United States Supreme Court and the Sixth Circuit Court of Appeals. I believe it would be my obligation to faithfully follow the precedents of the higher courts, and to give them full force and effect, regardless of whether I personally agree or disagree with them.

4. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedents and give them full force and effect, regardless of whether he or she personally agrees or disagrees with those precedents. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹

¹ *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

- i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

Response: Yes. It is my understanding that the quoted language is binding legal precedent.

- ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?

Response: It is my understanding that “lawful marriages” refers to marriages deemed lawful by the individual states.

- iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

Response: Yes.

- iv. Are you committed to upholding this precedent?

Response: Yes. If confirmed, I would follow all precedent from the United States Supreme Court and the Sixth Circuit Court of Appeals.

- b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. If confirmed, I commit to giving this and all portions of the *Windsor* decision full force and effect.

² *Id.* 2689-2690.

c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. If confirmed, I commit to giving this and all portions of the *Windsor* decision full force and effect.

d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Response: Yes. If confirmed, I commit to giving this and all portions of the *Windsor* decision full force and effect.

e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁵

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

³ *Id.* at 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

- ii. **Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes. If confirmed, I commit to giving this and all portions of the *Windsor* decision full force and effect.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: The first step would be to look at the plain language of the applicable statute, regulation or rule at issue. If the language is clear and unambiguous, then I would make a decision by impartially applying it to the facts of the case. If the language is not clear and unambiguous, then I would look for guidance in case law from the United States Supreme Court and Sixth Circuit Court of Appeals that is analogous to the facts of the case at hand. If analogous case law does not exist, then I would seek guidance from other federal appellate court cases for persuasive authority.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the precedent without regard to my personal views.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes enacted by Congress are presumed to be constitutional. A court should consider whether a statute is constitutional only when such an inquiry is necessary to decide the case at hand and should declare a federal statute unconstitutional only when a provision of the Constitution is violated or when Congress has exceeded its authority.

8. **In your view, is it ever proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution? Please explain.**

Response: No. I do not believe that foreign law or the views of the “world community” should be relied upon when determining the meaning of the Constitution. If confirmed, I would follow Supreme Court and Sixth Circuit authority regarding the meaning of the Constitution.

9. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: Throughout my legal career, including my service as United States Attorney, I have demonstrated respect for our judicial system and commitment to the rule of law. If confirmed, my decisions would remain grounded in precedent and the text of the law. No underlying political ideology or motivation will impact my judicial decisions.

- 10. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: A judge should be fair and impartial to all parties, regardless of the judge's personal views. Throughout my legal career, including my service as United States Attorney, I believe I have earned a reputation of being fair-minded and reasonable. If confirmed, I would treat all parties fairly and impartially, without regard to my personal views.

- 11. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I intend to actively manage the cases in my court. I would act, in accordance with the Federal Civil and Criminal Rules of Procedure, to set scheduling orders and status and pretrial conferences, as appropriate. I would work diligently to rule on pretrial motions in a timely manner, and to take additional steps to ensure that unreasonable delays are avoided. I would also work cooperatively with the other judges of my district.

- 12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, I believe that judges play an important role in controlling the pace and conduct of litigation. In criminal matters, judges are charged with enforcing the Speedy Trial Act, 18 U.S.C. §§ 3161-3174, to ensure the defendant's right to a timely disposition of criminal charges. In civil matters, the rules of procedure provide several tools to ensure the efficient administration of a case. I expect to utilize scheduling orders, as well as regular status and pretrial conferences, to ensure that cases progress appropriately.

- 13. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: If confirmed, I would approach each question and case from a neutral point of view, impartially applying precedent to the facts of the case. To reach a decision, I would carefully and fairly evaluate the facts of the case. I would look to the controlling precedent of the Supreme Court and the Sixth Circuit Court of Appeals for guidance. If confirmed, I would work hard to effectively transition from my current role as advocate to that of neutral. I recognize that, as an advocate, I begin work in each new case with a strategy for representing my client. In contrast, as a neutral I would not start a case with a strategy for

reaching an outcome. Instead, I would approach each case with an impartial, open mind. I also recognize that I would need to review areas of the law with which I have little experience. In addition to study and review, I would consult with my colleagues on the bench.

14. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.**

- a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

15. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions from the Department of Justice Office of Legal Policy (OLP) on August 5, 2014. Thereafter, I reviewed the questions and drafted responses. I then submitted my responses to OLP and discussed them with someone from that office. I made minor revisions before submitting the responses to the Committee.

16. **Do these answers reflect your true and personal views?**

Response: Yes.

**Questions for the Record
Senator Ted Cruz**

Responses of David J. Hale
Nominee, United States District Judge for the Western District of Kentucky

- 1. Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice’s judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: I have never served as a judge and accordingly I have not developed a specific judicial philosophy. However, if confirmed, I would work hard to be an able and respected District Judge. I would follow applicable precedent from the Supreme Court and the Sixth Circuit Court of Appeals. I would act fairly and impartially in each case that comes before me. I would treat litigants, lawyers and members of the public fairly and respectfully. I would decide cases in a timely manner.

With respect to identifying analogous judicial philosophies, I have not studied the opinions of the Warren, Burger or Rehnquist Courts sufficiently enough to be able to determine which Justice’s judicial philosophy I would consider most like mine.

- 2. Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: Yes. Consistent with the Supreme Court’s holding in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008), I would look to the original public meaning in interpreting the Constitution. If confirmed, I would apply *Heller* and all other binding precedent from the Supreme Court and the Sixth Circuit Court of Appeals.

- 3. If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If confirmed, I would not overrule binding precedent.

- 4. Explain whether you agree that “State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power.” *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: If confirmed, I would follow *Garcia* as well as all other binding precedent from the Supreme Court and the Sixth Circuit Court of Appeals, without regard to my personal views.

5. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court held that a statute criminalizing firearm possession in a local school zone exceeded Congress' Commerce Clause power. The Supreme Court enumerated three broad categories of activity which Congress may regulate pursuant to the Commerce Clause: 1) "the use of the channels of interstate commerce"; 2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and 3) "activities having a substantial relation to interstate commerce." *Id.* at 558 (internal citations omitted); *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow the *Lopez* and *Morrison* holdings, as well as all other binding precedent of the Supreme Court and Sixth Circuit Court of Appeals.

6. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952), the Supreme Court stated that the President's authority to issue an executive order or take executive action "must stem from either an act of Congress or from the Constitution itself." If confirmed, I would follow the *Youngstown* holding as well as all other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals.

7. When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that a right is fundamental for the purposes of the substantive due process doctrine where it is "deeply rooted in this nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Id.* at 720-21 (internal citations and quotation marks omitted). If confirmed, I will follow the *Washington v. Glucksberg* holding as well as all other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals.

8. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985), the Supreme Court held that legislative classifications based upon race, alienage, national origin and gender, or laws that impinge on personal rights protected by the Constitution, are subject to heightened scrutiny. If confirmed, I would follow the *City of Cleburne* holding as well as all other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals.

9. Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I do not have personal expectations regarding the future use of racial preferences in public higher education. If confirmed, I would follow the *Grutter v. Bollinger* holding as well as all other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals.

Nominations Hearing

July 29, 2014

Questions from Senator Lee**Questions for David J. Hale (nominated for W.D. Ky.)**

- 1. Mr. Hale, do you believe that the Constitution protects rights not expressly specified in the Constitution? If so, what is the textual vehicle for that — substantive due process, the Privileges or Immunities Clause, or elsewhere?**

Response: If confirmed, I would faithfully follow Supreme Court and Sixth Circuit precedent regarding the protection of rights not expressly specified in the Constitution. For example, the Supreme Court has interpreted the substantive due process clause to include certain rights not specified in the Constitution. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Court held that a right is fundamental for the purposes of the substantive due process doctrine when it is “deeply rooted in this nation’s history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Id.* at 720-21 (internal citations and quotations omitted).

- a. Do you believe that the Constitution provides for a right to privacy?**

Response: I understand that the Supreme Court has not found a comprehensive right to privacy in the Constitution, but has referred to privacy in holdings regarding the guarantees of the Bill of Rights. If confirmed, I would follow applicable Supreme Court and Sixth Circuit precedent regarding privacy issues.

- 2. Mr. Hale, what are the limits on Congress’s Commerce Clause power?**

Response: In *United States v. Lopez*, 514 U.S. 549 (1995) (internal citations omitted), the Supreme Court held that a statute criminalizing firearm possession in a local school zone exceeded Congress’ Commerce Clause power. The Supreme Court enumerated three broad categories of activity which Congress may regulate pursuant to the Commerce Clause: 1) “the use of the channels of interstate commerce”; 2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities”; and 3) “activities having a substantial relation to interstate commerce.” *Id.* at 558 (internal citations omitted); *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow the *Lopez* and *Morrison* holdings, as well as all other binding precedent of the Supreme Court and Sixth Circuit.

- a. Do you believe that Congress has at any time overstepped its authority under that provision since *Wickard*, other than in *Lopez* and *Morrison*?

Response: I am not aware of any cases, other than *Lopez* and *Morrison*, where the Supreme Court has struck down a statute because it determined that Congress exceeded its Commerce Clause power. If confirmed, I would follow applicable Supreme Court and Sixth Circuit precedent regarding Congress's power to regulate under the Commerce Clause.

**Questions for the Record
Senator Grassley**

**Gregory N. Stivers,
Nominee, U.S. District Judge for the Western District of Kentucky**

1. What is the most important attribute of a judge, and do you possess it?

The most important attribute of a judge is dedication: to work hard to decide cases and issues expeditiously; to maintain impartiality; and to treat all persons coming before the court with courtesy and respect.

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

In my view the appropriate temperament of a judge should be one of respectfulness to the parties and attorneys appearing before the court to ensure that the parties believe that their case has been decided fairly and impartially. If confirmed, I believe I will meet this standard.

3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.

As a district court judge, I would be bound by decisions of the U.S. Supreme Court and the Sixth Circuit Court of Appeals. I would give these precedents full force and effect regardless of any personal disagreement I may have with those decisions.

4. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedents and give them full force and effect, regardless of whether he or she personally agrees or disagrees with those precedents. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."¹

¹ *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

- i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Yes. That statement is part of the holding in *Windsor*.

- ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?**

It is my understanding that by “lawful marriages”, Justice Kennedy was referring to marriages which are entered into under state law.

- iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Yes.

- iv. **Are you committed to upholding this precedent?**

Yes. If I were confirmed, I would be committed to follow this case or other applicable precedent issued by the U.S. Supreme Court.

- b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²**

- i. **Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Yes.

- ii. **Will you commit to give this portion of the Court’s opinion full force and effect?**

If confirmed, I would be committed to giving full force and effect to this and other binding Supreme Court precedents.

- c. **Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³**

² *Id.* 2689-2690.

³ *Id.* at 2691.

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Yes. If confirmed, I would be committed to giving full force and effect to this and other binding U.S. Supreme Court precedents.

- d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"⁴

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Yes.

- ii. Will you commit to give this portion of the Court's opinion full force and effect?

Yes. If confirmed, I would be committed to follow this case and other binding U.S. Supreme Court precedents.

- e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"⁵

- i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Yes.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

ii. Will you commit to give this portion of the Court’s opinion full force and effect?

Yes. If confirmed, I would be committed to follow this case and other applicable precedent established by the U.S. Supreme Court and the Sixth Circuit Court of Appeals.

5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

If faced with a case of first impression regarding interpretation of a statute, I would first look to the text of the applicable statute to see if its meaning was clear from the text alone or to see if there was binding U.S. Supreme Court or Sixth Circuit Court of Appeals precedent that had already interpreted the statute. If there was no binding precedent and if the statutory language was ambiguous I would resort to canons of statutory construction to attempt to discern the statute’s meaning. In a case of first impression regarding interpretation of the U.S. Constitution, I would look to the text and original public meaning of the language used by the drafters and would utilize analogous rulings of the U.S. Supreme Court and the Sixth Circuit Court of Appeals to guide my decision.

6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

I would follow binding precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals regardless of my personal beliefs regarding the decision.

7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Statutes enacted by Congress should be declared unconstitutional only when the statute clearly violates the Constitution or when Congress exceeds its authority under the Constitution.

8. In your view, is it ever proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution? Please explain.

As a district court judge, I do not believe it would be proper to rely on foreign law or views of the “world community” in determining the meaning of the Constitution, which is a domestic document.

9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

In almost thirty years of practicing law, I have represented my clients zealously without regard to my personal beliefs or political views. I can give my assurance that, if confirmed, I will decide cases before me based on the applicable law without regard to my personal beliefs.

- 10. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Over the course of my career I have developed a reputation as an attorney who has dealt fairly with clients and opposing counsel without regard to any differences which may have existed between my personal views and the substantive positions of my client or opposing parties. I can give my personal assurance that I will use my best effort to be fair to all who appear before me.

- 11. If confirmed, how do you intend to manage your caseload?**

I intend to use a case manager and to utilize the magistrate judges to assist in managing my caseload to enable me to issue rulings in an expeditious manner. I will be diligent in meeting with attorneys to provide reasonable and manageable deadlines to keep the cases moving.

- 12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

I believe that judges can play an important role in making sure cases keep moving toward resolution, whether by dispositive motion, settlement, or trial. Maintaining periodic status conferences can be an effective method to ensure that cases do not languish on the docket.

- 13. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

In deciding cases before me, I would look to the motions and briefs of the parties and would search for any other applicable precedent in considering the merits. Having spent my career in civil litigation, the most difficult part of the transition will be learning the criminal part of the docket. I did have experience as the foreperson of the federal grand jury which gave me insight into that process. I have also attended several sentencing, revocation, and suppression hearings to begin my preparation, in addition to reviewing the Federal Rules of Criminal Procedure and the Guidelines Manual of the United States Sentencing Commission.

- 14. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the**

number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

No.

15. Please describe with particularity the process by which these questions were answered.

I received these questions on August 5, 2014. I reviewed the questions and drafted an initial response. I then edited my responses, submitted them to the Department of Justice and discussed my responses with a representative of the Department of Justice on September 3, 2014. Following that discussion, a few minor revisions were made before the present submission.

16. Do these answers reflect your true and personal views?

Yes.

**Questions for the Record
Senator Ted Cruz**

**Gregory N. Stivers,
Nominee, U.S. District Judge for the Western District of Kentucky**

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

If I am confirmed, my judicial philosophy will be to work hard to decide cases before me fairly, impartially, and expeditiously, in accordance with the plain language of applicable statutes and precedents established by the U.S. Supreme Court and the Sixth Circuit Court of Appeals. I am not familiar enough with the respective judicial philosophies of the Supreme Court Justices on the Warren, Burger, or Rehnquist Courts to make a comparison to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

The U.S. Supreme Court has relied on the text and original meaning of Constitutional provisions in many cases. For instance, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court relied upon the Second Amendment's original public meaning. If confirmed, I would interpret the Constitution in accordance with established precedent, including *Heller*.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

If confirmed as a district court judge, I would not overrule any precedent of the U.S. Supreme Court or the Sixth Circuit Court of Appeals.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

If confirmed as a district court judge, I would follow *Garcia* without regard to any personal opinion I may have regarding the holding of the case.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

In ruling on issues related to the extent of Congress' power under the Commerce Clause, I would follow the precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals in determining whether that power extends to non-economic activity. See, e.g., *United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000).

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

As the U.S. Supreme Court has recognized, "[t]he President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (internal citations omitted). The Court has recognized the proper analysis for reviewing executive orders or actions is set forth in Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634-55 (1952). If confirmed as a district court judge, I would follow the precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals in reviewing executive orders or actions.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

The U.S. Supreme Court has defined fundamental rights as being "those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted). If confirmed as a district court judge, I would follow this and other applicable precedent of the U.S. Supreme Court and Sixth Circuit Court of Appeals for the purpose of substantive due process analysis.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

The U.S. Supreme Court has recognized two forms of heightened scrutiny under the Equal Protection Clause: strict scrutiny and intermediate scrutiny. The Court has applied strict scrutiny to any law creating classifications based upon "race, alienage, or national origin," or "when state laws impinge upon personal rights protected by the Constitution." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). The Court has applied intermediate scrutiny to laws creating classifications based upon gender or illegitimacy. *See id.* at 440-41. If confirmed as a district court judge, I would follow the applicable precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals in analyzing classifications under the Equal Protection Clause.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

In ruling on issues related to the use of racial preferences in public higher education I would follow the established precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals, regardless of any personal expectations I may have.

**Questions for the Record
Senator Lee**

**Gregory N. Stivers,
Nominee, U.S. District Judge for the Western District of Kentucky**

1. Mr. Stivers, how would you describe your approach to statutory interpretation?

a. To what sources would you look in deciding a case that turned on interpretation of a federal statute?

In interpreting a statute, I would first look to the text of the statute to see if its meaning was clear from the text alone or to see if there was binding U.S. Supreme Court or Sixth Circuit Court of Appeals precedent that had already interpreted the statute. If there was no binding precedent and if the statutory language was ambiguous I would look next to the canons of statutory interpretation to attempt to discern the statute's meaning.

b. Does a statute have a purpose beyond the purpose expressed in the enacted text of the legislation and if so, how would a judge be capable of adducing a statute's purpose?

Statutes are to be applied in accordance with their plain language, because the text of the statute is the best evidence of the statute's purpose. Other considerations, such as statutory intent, are to be resorted to only when the statutory language is ambiguous.

2. Mr. Stivers, what role do the text and original meaning of a constitutional provision play in interpreting the Constitution?

The U.S. Supreme Court has relied on the text and original meaning of Constitutional provisions in many cases. For instance, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court relied upon the Second Amendment's original public meaning. I would faithfully apply this and any other applicable precedent in interpreting the Constitution.

a. To what extent are broadly worded constitutional provisions, such as the Equal Protection Clause, limited to the applications potentially foreseeable by their Framers, as opposed to announcing enduring principles that must subsequently be applied to new unfolding circumstances?

If confirmed, I will follow the precedents established by the U.S. Supreme Court and the Sixth Circuit Court of Appeals in construing the scope of the Equal Protection Clause or other broadly worded constitutional provisions.



AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary

Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

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New York, NY 10036-8299

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Suite 2300
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Boston, MA 02109-2129

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199 Water Street, Fl. 6
New York, NY 10038-3526

THIRD CIRCUIT
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ELEVENTH CIRCUIT
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Suite 4650
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Denver, CO 80203-4536

THIRTEENTH CIRCUIT
Peter Prieto
Suite 800
25 West Flagler Street
Miami, FL 33130-1720

D.C. CIRCUIT
Ronald A. Cass
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Great Falls, VA 22066-1743

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Ellen J. Flannery
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Denise A. Cardman
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Please respond to:

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E-Mail: bplevan@proskauer.com

VIA EMAIL AND FIRST-CLASS MAIL

June 27, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Madeline Cox Arleo to the United States
District Court for the District of New Jersey

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Madeline Cox Arleo who has been nominated for a position on the United States District Court for the District of New Jersey. The Committee is of the opinion that Magistrate Judge Arleo is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Magistrate Judge Arleo.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Madeline Cox Arleo (via email)
The Honorable W. Neil Eggleston (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

June 27, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on June 27, 2014.



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FEDERAL CIRCUIT
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STAFF COUNSEL
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AMERICAN BAR ASSOCIATION

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E-Mail: bplevan@proskauer.com

VIA EMAIL AND FIRST-CLASS MAIL

June 16, 2014

RECEIVED JUN 25 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Victor Allen Bolden to the United States
Court for the District of Connecticut

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Victor Allen Bolden who has been nominated for a position on the United States District Court for the District of Connecticut. A substantial majority of the Committee is of the opinion that Mr. Bolden is Well Qualified for this position and a minority of the Committee is of the opinion that Mr. Bolden is Qualified for this position.

A copy of this letter has been provided to Mr. Bolden.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Victor Allen Bolden, Esq. (via email)
The Honorable W. Neil Eggleston (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

1556

June 16, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on June 16, 2014.

1557

John W. Barnett Law Office 680 Beebe Rd., Putney, VT 05346

June 18, 2014

Hon. Patrick J. Leahy
437 Russell Senate Bldg.
Washington, D.C. 20510

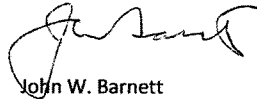
Dear Senator Leahy,

I am writing concerning the appointment by the President of Victor Bolden to be a Judge of the U. S. District Court for Connecticut. I knew Victor when I was practicing in Connecticut where I was a member of the bar for over 50 years. I was admitted to the bar in Vermont in 2009 where I now work principally on pro bono matters.

I was first acquainted with Victor when he was general counsel for the NAACP Legal Defense and Educational Fund , for which he tried cases in Federal Courts all over the country. He was then commuting to his office in New York City from New Haven where he had moved since his wife had a faculty position at Yale. I suggested that he consider a position with the law firm of Wiggin and Dana in New Haven where I was a partner. He was promptly hired, soon became a partner and handled many important litigation matters. In my opinion he is not only an excellent lawyer but also a person of great intellect and integrity. He will make an excellent judge.

I hope for your support in his confirmation.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John W. Barnett", written in a cursive style.

John W. Barnett

1558



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RECEIVED AUG 06 2014
RECEIVED

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New Britain, CT 06051
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F. (860) 223-4488
www.ctbar.org

July 25, 2014

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
437 Russell Senate Building
Washington, DC 20510

RE: Judge Victor A. Bolden

Dear Senator Leahy:

As you may know, the Federal Judiciary Committee of the Connecticut Bar Association has had under consideration the nomination of the Honorable Victor A. Bolden to the United States District Court.

After conducting its investigation in accordance with Rules of Procedure for the Federal Judiciary Committee, the Committee unanimously concluded that Judge Bolden "is qualified" for the position under consideration.

Enclosed please find the letter I received from the Chairperson of the Committee.

Very truly yours,

A handwritten signature in black ink that reads "Mark A. Dubois".

Mark A. Dubois,
President

Enclosure

1559

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

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July 28, 2014

Hon. Patrick Leahy, Chairman
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Hon. Charles Grassley, Ranking Member
U.S. Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Victor A. Bolden

Dear Senators Leahy and Grassley:

I write in support of the nomination of Victor Bolden of New Haven, Connecticut to the United States District Court for the District of Connecticut.

I have practiced law in the federal and state courts in Connecticut for forty-four (44) years, and it has been my pleasure to know and work with Mr. Bolden for the past ten of those years.

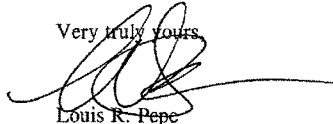
I first met Attorney Bolden when he was with the law firm of Wiggin & Dana in New Haven, and I was the Chairman of the Connecticut Bar Association's Standing Committee on Professionalism. We worked together in a joint venture between the New Haven Bar Association and the CBA to present the annual Bench/Bar Professionalism Symposium in New Haven. It was a huge success due in large part to Attorney Bolden's efforts. Thereafter, I became Vice President and then President of the Connecticut Bar Association and had the pleasure of working with him on various bar matters while I served in those capacities. Since then, we have collaborated on several other Bar Association projects, and I presently serve with him on the Connecticut Law Tribune Editorial Board.

During this time, I have come to know Attorney Bolden as an exceedingly intelligent, capable and conscientious lawyer, who is dedicated to improving both the bar of this state and the community it serves. He is always willing to commit his many talents to those objectives, with no expectation of a reward, other than the knowledge that he has left a situation better than he found it. His character and integrity are beyond reproach, and he invariably displays a calm and reserved temperament, even when issues become heated.

In sum, I know Victor Bolden to possess all the qualities necessary to serve with distinction as a United States District Judge, and I urge your favorable consideration of his nomination.

Thank you for your consideration.

Very truly yours,



Louis R. Pepe

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OFFICE OF PERSONNEL AND LABOR RELATIONS

July 28, 2014

Chairman Patrick Leahy
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington D.C. 20510

VIA FACSIMILE ONLY

Re: Victor Bolden Confirmation Hearing

Dear Senator Leahy:

This letter is in support of Attorney Victor Bolden's confirmation as a federal judge. I have known Attorney Bolden for several years in a professional and personal category and believe he is an excellent choice for the position and will serve with distinction. I had the pleasure of working with Attorney Bolden for approximately two years at the City of New Haven and then again once I was appointed to the New Haven Police Commission.

While working for the City of New Haven, Attorney Bolden and I were each department heads. As the head of Human Resources, my office had significant interaction with the Corporation Counsels' office and during that time I learned that Attorney Bolden was a very deliberative individual who was an independent thinker and a consummate professional with high morals. His legal analysis was always professional. I worked with three corporation counsels and he was by far the most impressive incumbent during my tenure with the City.

As a member of the City of New Haven's Police Commission, I again have the opportunity to work with Attorney Bolden and his continued professionalism shows in the manner in which he and his staff respond to the requests from the Commission.

Again, I believe Attorney Bolden is an excellent choice and I hope your Committee gives a favorable recommendation on his appointment.

Very truly yours,

Emmet P. Hibson, Jr., Esq.

1561

G. Evelise Ribeiro
74 Front Street
New Haven, CT 06513

July 28, 2014

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Chairman Patrick Leahy
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C 20510

Re: Attorney Victor Bolden, Appointment to the U.S. District Court in Connecticut

Dear Chairman Leahy:

I am writing in support of the nomination of Attorney Victor Bolden to the U.S. District Court in Connecticut.

I have known Attorney Bolden for a number of years. As a Commissioner for the New Haven Department of Police Services, I have had the pleasure to work with him in his capacity as Corporation Counsel. There were numerous times that I, as Chairperson of the Police Commission, would consult Attorney Bolden on a variety of issues.

Attorney Bolden was always extremely professional, courteous and knowledgeable in his responses and interactions. He is a person who has integrity, exercises sound judgment and is fair in his decisions. He is an extremely competent attorney and will be an excellent judge. I am confident that he will represent the federal court system with honesty and fairness.

As a citizen and constituent of this great state of Connecticut, I support this very important nomination, of Attorney Victor Bolden to the U.S. District Court in Connecticut and trust that U.S. Senate Judiciary Committee will confirm his appointment.

Sincerely,

G. Evelise Ribeiro



*Dean M. Esserman
Chief of Police*

**NEW HAVEN
DEPARTMENT OF POLICE SERVICE**
One Union Avenue • New Haven • Connecticut • 06519



*Toni N. Harp
Mayor*

RECEIVED AUG 06 2014

Tuesday, July 29, 2014

Chairman Patrick Leahy
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Charles Grassley
U.S. Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy and Senator Grassley:

It is a pleasure to write this letter of support for President Obama's nomination of Victor Bolden for a position on the Federal bench.

I have worked with Victor Bolden as the City of New Haven's Corporation Counsel, for nearly three years. He is a man of enormous ability and unquestioned integrity, as is his unrivaled work ethic.

Victor Bolden is the hallmark of a professional. He enjoys the respect and support of his colleagues on the bar, his co-workers and the community. He is thoughtful and deliberative in his advice, always bringing compassion, understanding and deep thinking to any issue brought to his attention.

As a citizen of New Haven and as a law enforcement leader, I speak for many when I say that he has unconditional support for his nomination.

Thank you for your consideration.

Respectfully,

Dean M. Esserman

Dedicated to Protecting Our Community

phone (203) 946-6333 fax (203) 946-7294 website www.cityofnewhaven.com/police

Child Heart Associates
PEDIATRIC CARDIOLOGY

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Chairman Patrick Leahy
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510
FAX: 202-224-9516

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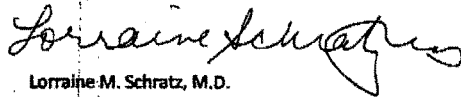
Dear Chairman Leahy:

I am writing in support of Victor Bolden, nominee for U.S. Circuit Court judge in Connecticut.

I have known Victor since 1978, when we were classmates at Patchogue-Medford High School in Medford, N.Y. Victor and I participated together in musical theater, on the school newspaper and in National Honor Society, of which he was President. I know Victor as a brilliant yet unassuming man with a caring attitude and reasoned approach to life's problems. He has a quick smile, good sense of humor and could be counted on to work hard and to do the right thing, even at an age when that was challenging. It was not a surprise to me when Victor was accepted to Columbia University, and later to Harvard. I have followed his illustrious career as a lawyer at every turn and have enjoyed reconnecting with Victor at our high school reunions. His record speaks for itself.

As a registered and active Republican (involved in my town's Republican Town Committee and in the campaigns of many Republican candidates), I urge the Senate to put politics aside and to push for a quick and unencumbered hearing and confirmation of Victor's appointment. He embodies exactly what we need in the United States judiciary: the combination of wisdom, understanding of the law, caring for others and the conviction to do what is right, not convenient. I believe that Victor will serve fairly and justly; he will serve the citizens of Connecticut and the United States in the exemplary fashion in which he has lived his life since the beginning.

Thank you.



Lorraine M. Schratz, M.D.

Child Heart Associates
33 Oak Avenue
Worcester, MA 01605

July 25, 2014

Senator Patrick J. Leahy
Chairman
Senate Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy:

I write this correspondence with great excitement and enthusiasm to support the nomination and appointment of Attorney Victor Bolden to the U.S. District Court of Connecticut.

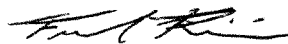
I have known and worked with Attorney Bolden for more than 5 years. I first met him around the time that he was appointed Corporation Counsel for the City of New Haven. Our first interactions surrounded an ongoing legal matter that I was the lead plaintiff, Ricci et al. v. DeStefano et al.

As a member, representative and current Secretary-Treasurer of New Haven Fire Fighters IAFF Local 825, positions I've held for over 16, these were challenging times. Emotions and frustrations surrounding this issue were somewhat raw to say the least. The relationship between the plaintiffs, union and the City, especially the Corporation Counsel was completely broken and seemed irreparable.

Luckily that was about to change. It was apparent to me from our initial dealings whether as a plaintiff or union representative that the Mayor had made a great choice in the selection of the new Corporation Counsel. Although Victor represented the City and therefore would be naturally presumed an adversary it never felt that way. Through the remainder of the litigation from the U.S. Supreme Court decision to the final judgments Victor displayed and has always displayed the attributes one could hope for in a jurist. He's always conscious that there are real people affected by decisions that are made but he is also very deliberate in those decisions with an unwavering commitment to the law. Victor is a consummate professional with unquestionable integrity. These observations are not limited to me but have been the topic of many discussions between me and others, including those inside and outside the fire service. I cannot think of anyone who would make a finer addition to our federal judiciary than him. And I could not have a greater honor than to write this correspondence supporting that.

If you have any questions or there is something more that you feel I could be helpful with please do not hesitate to contact me.

Respectfully,



Lt. Frank Ricci
C: (203) 285-4907

July 25, 2014

Senator Charles E. Grassley
Ranking Member
Senate Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

I write this correspondence with great excitement and enthusiasm to support the nomination and appointment of Attorney Victor Bolden to the U.S. District Court of Connecticut.

I have known and worked with Attorney Bolden for more than 5 years. I first met him around the time that he was appointed Corporation Counsel for the City of New Haven. Our first interactions surrounded an ongoing legal matter that I was the lead plaintiff, Ricci et al. v. DeStefano et al.

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Respectfully,



Lt. Frank Ricci
C: (203) 285-4907

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July 28, 2014

VIA FIRST CLASS MAIL AND E-MAIL:

Chairman Patrick Leahy
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510
FAX: 202-224-9516

Ranking Member Charles Grassley
U.S. Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510
FAX: 202-224-9102

Dear Chairman Leahy and Ranking Member Grassley:

I write in strong support of the nomination of Victor Bolden to the United States District Court for the District of Connecticut. I am a partner at the law firm of Pullman & Comley LLC, and I have practiced in federal and state court in Connecticut for nineteen (19) years. I am currently the President of the New Haven County Bar Association.

I have known Victor Bolden for almost 15 years. We met as a result of our membership in the New Haven County Bar Association (the "Bar Association"), of which Victor is currently the Treasurer. Over those years, and by serving as officers of the Association together, I have had the opportunity to work closely with Victor on many events, programs and issues.

I have no doubt that Victor will be an excellent judge. Victor is bright, articulate and hardworking. His honesty and integrity are beyond reproach. Victor's selflessness and dedication to the rule of law make his nomination to this important position well deserved and appropriate.

I respectfully urge you to vote to confirm Victor.

Very truly yours,



Robert C. Hinton

ACTIVE/1.7/RHINTON/4730817v1

WIGGIN AND DANA

Counsellors at Law

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Steven B. Malech
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212.490.0536 fax
smalech@wiggin.com

July 28, 2014

The Honorable Patrick Leahy
Chairman, U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, U.S. Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Victor A. Bolden

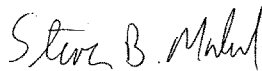
Dear Senators Leahy and Grassley:

As a litigation partner at Wiggin and Dana LLP with approximately 19 years of experience appearing before federal and state judges in Connecticut and New York, it is a privilege to write in support of the Committee's consideration of Victor Bolden's nomination as a United States District Court Judge for the District of Connecticut.

As I think about the qualities possessed by the best judges before whom I have appeared, it strikes me that Victor has them all. He has broad real world experience representing businesses, individuals, municipalities and non-profits, as: (a) a trial and appellate lawyer in private practice; (b) Corporation Counsel to the City of New Haven; and (c) counsel to the NAACP Legal Defense Fund and the ACLU. He has excellent academic credentials (Columbia College and Harvard Law School) and experience as a teacher, writer and public speaker. But, perhaps most importantly, Victor has a sense of compassion, decency, integrity, and morality that I believe will reflect itself in a judge who upholds the rights of all who appear before him, regardless of their station or status in society. These traits are reflected in his service on the Boards of the National Voting Rights Institute, the National Coalition Against Censorship, the Connecticut Food Bank, and the International Center of New Haven, and his teaching Sunday School and Confirmation classes at his Church.

In sum, Victor will be a valuable addition to the Bench. And, for that reason, it is a privilege to support his nomination. I respectfully request that he be favorably considered by the Committee.

Very truly yours,



Steven B. Malech



School of Law
Office of the Dean
Timothy S. Fisher
Dean and Professor of Law

Sent via fax (202) 224-9516, (202) 224-9102

July 25, 2014

Chairman Patrick Leahy
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Charles Grassley
U.S. Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

It is my pleasure to offer this letter in support of the nomination of Victor Bolden as a United States District Judge.

I have known Victor Bolden for several years through professional capacities, and have been impressed throughout our contact with his professionalism, intelligence and wisdom.

In addition, I dealt with Victor as opposing counsel before I assumed the role of Dean at the UConn Law School. I represented a private developer that had a major dispute with the City of New Haven. Victor was the principal representative of the City in our negotiations. Both I and my entire client team were impressed with the balance and fairness that he brought to the matter. In such a highly technical but also high profile case as ours, it would have been easy and natural for the city's counsel to adopt an adversarial and obstructive posture. Instead we found that Victor adopted an approach that minimized conflict and facilitated a sensible and far more mutually beneficial outcome.

I am confident that he will bring this sense of balance to his role as a federal judge, in addition to his obvious mastery of the law.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy S. Fisher", written over a horizontal line.

Timothy S. Fisher

55 ELIZABETH STREET
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QUINNIPIAC UNIVERSITY

SCHOOL OF LAW

July 28, 2014

Chairman Patrick Leahy
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Charles Grassley
U.S. Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am currently a Professor of Law and Dean Emeritus at the Quinnipiac University School of Law. I write in enthusiastic support of Victor Bolden's appointment to the United States District Court for the District of Connecticut, and to urge you and your colleagues to confirm him for this important position.

I served as dean of the Quinnipiac University School of Law from 2002 – 2013. During most of those years I was also an active member of the New Haven County Bar Association and the Connecticut Bar Foundation, and I served from 2009-2014 as the Chair of the Connecticut Bar Foundation James W. Cooper Fellows.

In these several capacities I have worked frequently and closely with Attorney Bolden since 2002, and I have gotten to know him well. He served for many years on my Dean's Advisory Council, and we also worked together for a number of years on the New Haven County Bar Association Executive Committee.

From working closely with Attorney Bolden in a range of different contexts – over a period of approximately twelve years – I am confident that he will be an extraordinarily good federal judge. I have found him to be consistently judicious, fair, hard-working, courteous, and absolutely committed to justice, the rule of law and the public good. He is extremely smart, and he is also an excellent thinker and writer. I have always been impressed by the thoughtfulness and attentiveness with which Attorney Bolden listens to others, and by the careful and respectful manner in which he considers others' views, even when those views differ from his own. He is also very emotionally intelligent, and he seems to inspire those who work with him to tackle problems – as he does – with creativity, civility, wisdom, and integrity.

In short, I firmly believe that Attorney Bolden will serve with great distinction and effectiveness on our federal bench, and Connecticut will benefit greatly from his confirmation.

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Thus, with great enthusiasm and no reservations, I urge you and your colleagues to confirm him for this appointment.

Please let me know if I can provide any additional information that would be helpful to you in your consideration of Attorney Bolden's nomination.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brad Saxton". The signature is fluid and cursive, with the first name "Brad" and last name "Saxton" clearly distinguishable.

Brad Saxton
Professor of Law and Dean Emeritus

VITALE AGENCY

Wayne A Vitale
President

July 26, 2014

Chairman Patrick Leahy
Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Charles Grassley
Judiciary Committee
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Victor Allen Bolden

Dear Chairman Leahy and Ranking Member Grassley:

I am writing in support of the Presidential nomination of Mr. Victor Allen Bolden for a judgeship on the United States District Court for the State of Connecticut.

By way of introduction, I would first tell you that I am a conservative Republican from Long Island, New York. Over the past 30 years, I have been an avid supporter of Republican candidates for both local, statewide and national office, with many of whom I am personally acquainted. Not only have I been a member of my local Republican Committee, but have also been elected to three terms on our local Board of Education.

I admire and respect Victor Bolden and feel so strongly that he would make an excellent federal judge, that I feel compelled to rise in support of his nomination. I have known Victor for over 35 years. We met as classmates at Patchogue-Medford High School in Medford, NY, where he first had the opportunity to demonstrate his talents and abilities. In the intervening years, my admiration and respect for Victor have only increased. Put simply, I believe that he is one of the best nominees to the Federal Bench President Obama could have selected.

Given the opportunity, Victor Bolden has the potential to become one of the finest jurists of his generation. Not only does he possess a keen intellect, but he is a man of the highest character and integrity. He is fair-minded, judicious, dedicated and

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VITALE AGENCY

Wayne A Vitale
President

honest. That Victor has an excellent educational pedigree is beyond question. So too, is his long list of legal accomplishments. What I wish to address here are those qualities which distinguish Victor from his peers and which are both unique and necessary for a United States Federal Judge.

The rule of law is one of the basic pillars of our civil society. The ability to resolve disputes amongst ourselves in a civil manner is what distinguishes us as a great nation. For that system to work, however, all parties to a dispute must believe that they are being heard, that their grievances are given a fair hearing and that the resulting decision is fair and impartial. For the judiciary to function as intended, it is absolutely necessary that our judges be intellectually gifted, fair, honest and impartial. You could not find a better example of this type of individual than Victor Bolden.

Application of the rule of law requires not just knowledge but wisdom. Through my decades-long interaction with Victor, I am absolutely convinced that he possesses both. If confirmed by the Senate, I believe he would be a fair, impartial, and compassionate jurist; one who would base his decisions solely upon the facts of the cases before him and upon the law as it is written.

Based upon the aforementioned, I would encourage the Judiciary Committee to approve his nomination and forward it to the full Senate with your unconditional recommendation that he be confirmed. To that end, I also would encourage those members of my own party to reach across the aisle and offer true bi-partisan support to a man who both is, and will be, a dedicated servant of the American People, in the truest sense of the word.

Thank you for your consideration.

Sincerely,



Wayne A. Vitale, M.B.A. / S.D.B.L.
Center Moriches, New York

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July 25, 2014

The Honorable Patrick Leahy
Chairman, U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, U.S. Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Re: **Victor A. Bolden**

Dear Senators Leahy and Grassley:

Gentlemen – I write in support of the Committee’s consideration of Victor Bolden’s nomination as a United States District Court Judge for the District of Connecticut.

When I began practicing in New Haven, Judge Jon O. Newman was sitting on the Bench of the United States District Court. For more than forty years, it has been my privilege to practice here before a most distinguished cadre of exceptional Judges who have carried on the tradition of excellence I first witnessed in Judge Newman. As I think about Victor’s nomination, it occurs to me that there could be no finer choice to follow in those footsteps.

As you would expect, having known Victor for more than a dozen years, there are many things that lead me to that conclusion. The first is Victor’s consistent excellence as a lawyer – at the NAACP, as my colleague in Wiggin and Dana’s complex litigation practice, and as Corporation Counsel to the City of New Haven. In each of those roles Victor delivered on the promise suggested by his Columbia College/Harvard Law School credentials, demonstrating not only the intellectual horsepower one might expect given that background, but also the seasoned and considered judgment that any given set of facts and issues of law might require. One need look no further than Victor’s exceptional performance and principled representation of the City of New Haven in the Firefighters litigation and the Occupy New Haven proceedings to illustrate this point.

Second, I’m struck by the depth and breadth of Victor’s experience: (1) as a trial and appellate lawyer in private practice; (2) as a teacher, writer, and public speaker; (3) as counsel to the NAACP Legal Defense Fund and the ACLU; and (4) as Corporation Counsel to the City of New Haven during these most challenging times. The broad range and diversity of Victor’s legal experience insures that he will bring to the Bench a range of perspective that few among us could claim.

*New Haven Stamford New York Hartford Philadelphia
Greenwich*

WIGGIN AND DANA

*Counsellors at Law*July 25, 2014
Page 2

Third, Victor has demonstrated throughout his career his strong commitment to the Bar and to the work of the profession, quickly earning the respect of his colleagues and peers. By the time he left Wiggin and Dana in 2005 to become General Counsel to the NAACP LFD, he had already been elected to the "leadership track" of the New Haven County Bar Association, in line to become President. When he returned to New Haven in 2009 as the City's Corporation Counsel, the NHCBA had the good sense to re-elect him to its leadership track where, once again, he's in line to become President. Victor remains an active member as well of the New Haven Inn of Court, the Benchers, the CT Judicial Branch Civil Commission, and the Board of the Connecticut Veterans Legal Center.

Next, Victor's lifelong commitment to the community continues to be exemplary. Notwithstanding the considerable demands of his professional responsibilities and Bar-related work, Victor has still found time to serve on the Boards of the National Voting Rights Institute, the National Coalition Against Censorship, the Connecticut Food Bank, and the International Center of New Haven, and to teach Sunday School and Confirmation classes at his Church.

That last "credential" – teaching Sunday School and Confirmation classes – captures for me a most compelling reason why Victor's nomination to this important position should be approved. Aside from his professional achievements, and his experience, and his talent – all of which are extraordinary – Victor is as fine a man as I have ever known, a man of decency, integrity, caring, compassion, and sound moral judgment. He will be a wonderful addition to the Bench. I'm honored to support his nomination and I urge without qualification the Committee's favorable consideration.

Respectfully submitted,



William H. Prout, Jr.

III



CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10038-8299

AMERICAN BAR ASSOCIATION

**Standing Committee on
the Federal Judiciary**
Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

FIRST CIRCUIT
Paul E. Summit
Suite 2300
1 Post Office Square
Boston, MA 02109-2129

Please respond to:

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Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

RECEIVED JUL 1 2014

SECOND CIRCUIT
Seymour W. James, Jr.
199 Water Street, Fl. 6
New York, NY 10038-3526

THIRD CIRCUIT
Randi Corbin Walker
1 Riverfront Plaza, Fl. 16
1037 Raymond Boulevard
Newark, NJ 07102-5423

VIA EMAIL AND FIRST-CLASS MAIL

FOURTH CIRCUIT
Willis P. Whitchard
501 Eastowne Drive #130
Chapel Hill, NC 27514

June 20, 2014

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
1101 College Street
Bowling Green, KY 42102-0770

Re: **Nomination of David J. Hale to the United States
District Court for the Western District of Kentucky**

SEVENTH CIRCUIT
Patricia Costello Slovick
Suite 6600
283 South Wacker Drive
Chicago, IL 60606-4307

Dear Chairman Leahy:

EIGHTH CIRCUIT
Charles A. Weiss
Suite 3600
211 N. Broadway
Saint Louis, MO 63102-2789

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of David J. Hale who has been nominated for a position on the United States District Court for the Western District of Kentucky. The Committee is of the opinion that Mr. Hale is Unanimously Qualified for this position.

NINTH CIRCUIT
Edith A. Macchial
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

A copy of this letter has been provided to Mr. Hale.

TENTH CIRCUIT
Sheryl J. Wolff
Suite 4100
601 Union Street
Seattle, WA 98101

Sincerely,

ELEVENTH CIRCUIT
Jim Gish
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4556

Bettina B. Plevan
Chair

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066-1743

BBP:ddc

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
STAFF COUNSEL
Denise A. Cardman
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misc.cardman@americanbar.org

cc: David J. Hale, Esq. (via email)
The Honorable W. Neil Eggleston (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

1576

June 20, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on June 20, 2014.



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New York, NY 10036-8299

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Boston, MA 02109-2129

SECOND CIRCUIT
Seymour W. James, Jr.
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New York, NY 10038-3526

THIRD CIRCUIT
Tara Corbin Walker
1 Riverfront Plaza, Fl. 16
1037 Raymond Boulevard
Newark, NJ 07102-5423

FOURTH CIRCUIT
Willis P. Winchard
501 Eastowne Drive #130
Chapel Hill, NC 27514

FIFTH CIRCUIT
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New Orleans, LA 70130

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SEVENTH CIRCUIT
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283 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
Charles A. Weiss
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211 N. Broadway
Saint Louis, MO 63102-1789

NINTH CIRCUIT
Edith B. Marshall
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
Sheryl J. Willett
Suite 4100
601 Union Street
Seattle, WA 98101

ELEVENTH CIRCUIT
Jim Gish
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D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066-1743

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-7401

STAFF COUNSEL
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AMERICAN BAR ASSOCIATION

Please respond to:

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E-Mail: bplevan@proskauer.com

RECEIVED JUL 1 2014

VIA EMAIL AND FIRST-CLASS MAIL

June 20, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Gregory N. Stivers to the United States
District Court for the Western District of Kentucky

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Gregory N. Stivers who has been nominated for a position on the United States District Court for the Western District of Kentucky. The Committee is of the opinion that Mr. Stivers is Unanimously Qualified for this position with one recusal.

A copy of this letter has been provided to Mr. Stivers.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Gregory N. Stivers, Esq. (via email)
The Honorable W. Neil Eggleston (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

1578

June 20, 2014
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on June 20, 2014.

**LEADER McCONNELL'S REMARKS TO THE SENATE JUDICIARY COMMITTEE
ON U.S. DISTRICT COURT NOMINEES HALE AND STIVERS
July 29, 2014**

Chairman Blumenthal, Ranking Member Grassley, members of the Senate Judiciary Committee, and other distinguished guests, thank you for having me here today to testify to the fitness for the bench of our two Kentucky nominees for the United States District Court for the Western District of Kentucky.

I'm pleased to come before the committee and voice my strong support for David J. Hale and Greg N. Stivers. I have no doubt that, after this committee has reviewed all of the documentation for these two outstanding Kentucky lawyers, you will come to the same conclusion.

David Hale has served as the U.S. Attorney for the Western District of Kentucky since May 2010. In that role, he has focused aggressively on working to improve collaboration and cooperation among federal, state, and local law enforcement in his district, especially focusing on combatting the high levels of illegal drug abuse that are so prevalent in communities across our Commonwealth.

Although a native of my state's largest metropolitan area, Louisville, David has worked tirelessly at cooperative law enforcement efforts and educational endeavors in the more rural areas of western Kentucky. Sheriffs and chiefs of police who seldom crossed paths with a U.S. attorney have grown used to seeing Hale in their rural jurisdictions, bringing with him offers of assistance.

He has worked with his fellow U.S. attorney in the Eastern District of Kentucky to develop, plan, and co-sponsor a highly successful statewide summit on prescription pill abuse. And he has worked with local education and law-enforcement leaders in his district to increase awareness of prescription drug abuse among teenagers.

I worked closely with David on the designation of Hardin County, Kentucky, as a High Intensity Drug Trafficking Area county, or “HIDTA” county, in 2012, which gives Hardin County access to federal law-enforcement resources, training, and intelligence. And we are working together on getting the same designation for an adjacent Kentucky county that is similarly fighting against the scourges of illegal prescription drug and now heroin abuse.

Before becoming the U.S. Attorney for Kentucky’s Western District in 2010, David Hale worked extensively in private civil practice and as a line assistant U.S. attorney, in the very office that he now ably leads.

Our other nominee, Greg Stivers, is an experienced and respected civil practitioner who has represented his clients diligently for nearly 30 years in a broad range of complex litigation.

Although he was born in the historic eastern Kentucky town of Hazard, he has called the Western Kentucky town of Bowling Green home since graduating from the University of Kentucky law school in 1985. For his entire career he has practiced with the firm currently known as Kerrick Bachert Stivers, where he is a well-regarded partner.

He works with clients in employment-related disputes, and also represents municipalities in a wide range of litigation, including zoning, taxation, and code enforcement. Greg also has extensive experience in the area of workers compensation claims.

Furthermore, Greg has had the experience of representing Western Kentucky University in a broad range of complex litigation matters in the area of employment litigation as well as representing WKU on business and transactional matters.

His dedication to Western Kentucky University transcends the courtroom, having served as a director on the Hilltopper Athletic Foundation for many years, and as president in 2010.

Let me once again reiterate my unqualified support for both David Hale and Greg Stivers as nominees for the federal judiciary. Both men, proud graduates of my own alma mater, the University of Kentucky College of Law, have the requisite experience, temperament, and judgment required for the federal bench.

And both have the character that we look for in every federal judicial nominee. I hope the committee will agree with me that both David Hale and Greg Stivers are well qualified to serve on the federal bench.

Thank you.

Senator John D. Rockefeller IV
Statement before the Senate Committee on the Judiciary
On the Nomination of David J. Hale
July 29, 2014

Chairman Leahy, Ranking Member Grassley, Senator Blumenthal, and all Members of the Committee, thank you for holding this very important hearing today to consider the nomination of an individual who I believe will be an outstanding addition to our Federal Judiciary – Mr. David J. Hale to be a United States District Judge for the Western District of Kentucky.

As the Senior Senator from West Virginia, I should begin by explaining my interest in Mr. Hale's nomination to a Federal District Court in Kentucky. I have known Mr. Hale personally since my days as Governor of West Virginia, when his father, H. David Hale, served in my administration as the state's Banking Commissioner. Our families have remained close ever since, and I have continued to follow his son's career with interest and admiration.

I very much appreciate this opportunity to share with you my own knowledge of Mr. Hale's exemplary qualifications, while also recognizing that his untarnished credibility and unwavering commitment to justice are best exhibited by his lifelong record of personal and professional achievement.

First and foremost, David J. Hale is an extremely talented attorney who has proudly carried on his family's tradition of public service throughout his twenty-two-year legal career. In addition to a distinguished record as a litigator for thirteen years at two law firms in Kentucky, Mr. Hale has spent nearly ten years protecting his community from crime – first as an Assistant U.S. Attorney in Kentucky and then as the Senate-confirmed U.S. Attorney for the Western District of Kentucky.

As the chief law enforcement officer in this District, Mr. Hale is responsible for overseeing the prosecution of all crimes in his District and representing the Federal government in a variety of civil matters. During his tenure, he has litigated or overseen the successful prosecution of a number of significant cases involving murder, armed robbery, arson, child abuse, and drug trafficking.

Importantly, in a District that includes Fort Knox and Fort Campbell, Mr. Hale also serves as Chair of a U.S. Attorney working group to support the rights of servicemembers and veterans. He also serves on the Board of Directors of the Appalachia High Intensity Drug Trafficking Area, a program that helps eradicate drug trafficking and drug addiction in Kentucky, Tennessee, and my home state of West Virginia.

Despite the demanding nature of his legal practice, Mr. Hale has continued to devote a substantial amount of time in support of civic and charitable organizations in Kentucky: Kentucky YMCA Youth Association Board of Directors (1994-2006); Director of the Louisville MS Society (1993-1995); Louisville Urban League Board of Directors (2002-2009); Fern Creek Christian Church Board Member (1996-2010); Kentucky Educational Television Louisville Regional Advisory Committee (2003-2010); and many others. Having such a direct connection to the people of Kentucky will undoubtedly serve him well as a Federal Judge with jurisdiction over cases that arise in these same communities.

Chairman Leahy, Ranking Member Grassley, Senator Blumenthal, and Members of the Committee, I believe strongly in David J. Hale's ability to serve on our Federal bench. This Committee knows the importance of upholding the promise of justice and equality for all litigants in our court system. I am confident that today's hearing will reveal that Mr. Hale will live up to that promise and, if confirmed, will continue to serve our country with integrity, honesty, fairness, and justice.

